

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 77-1547

BRADFORD NATIONAL CLEARING CORPORATION and
BRADFORD SECURITIES PROCESSING SERVICES, INC.,

Petitioners,

-against-

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

NATIONAL SECURITIES CLEARING CORPORATION

Intervenor in support
of Respondent

Petition For Review Of An Order Of The
Securities And Exchange Commission

APPENDIX
Pages 1-125

United States Court of Appeals
for the District of Columbia Circuit

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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SERVICES, INC.,

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The following "CERTIFICATE LISTING AND DESCRIBING RECORD
IN THE APPENDIX OF THE PROCEEDING BEFORE THE SECURITIES AND EX-
CHANGE COMMISSION" shall serve as the table of contents for this
Appendix, which includes only the documents numbered 1-12
(pages 1-125).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRADFORD NATIONAL CLEARING CORPORATION
and BRADFORD SECURITIES PROCESSING
SERVICES, INC.,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

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-----X

No. 77-1547

CERTIFICATE LISTING AND DESCRIBING RECORD IN THE APPENDIX
OF THE PROCEEDING BEFORE THE SECURITIES AND EXCHANGE COMMISSION

Pursuant to Section 25(a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78y(a)(2), and Rules 17(b) and 30(b) of the Federal Rules of Appellate Procedure, the Petitioners herein designate that the documents hereinafter set forth comprise those portions of the record to which the petitioners wish to direct the particular attention of the Court.

<u>DOCUMENT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Order granting registration pursuant to Sections 17A(b) and 19(a)(1) of the Securities Exchange Act of 1934 in the matter of National Securities Clearing Corporation, File No. 600-15, Securities Exchange Act of 1934 Release No. 13163, 1/13/77.	1-36

<u>DOCUMENT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
2	Form 19b-4A, proposed rule change (File No. SR-NSCC-77-1) by National Securities Clearing Corporation, received 2/22/77.	37-46
3	Form 19b-4A, proposed rule change (File No. SR-NSCC-77-2) by National Securities Clearing Corporation, received 2/22/77.	47-68
4	Notice of filing and text of proposed rule change by the National Securities Clearing Corporation, Securities Ex- change Act of 1934 Release No. 13308, File No. ST-NSCC-77-1, dated 2/28/77.	69-76
5	Notice of filing and text of proposed rule change by the National Securities Clearing Corporation, Securities Ex- change Act of 1934 Release No. 13318, File No. SR-NSCC-77-2, dated 3/1/77.	77-90
6	Letter from TAD Depository Corporation <u>re</u> Securities Exchange Act of 1934 Release Nos. 13308 and 13318, received 3/28/77.	91-92

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7	Letter from Bradford Securities Processing Services, Inc. <u>re</u> Securities Exchange Act of 1934 Release Nos. 13308, 13318 and 13335, received 3/28/77.	93-97
8	Letter from Bradford National Clearing Corporation <u>re</u> Securities Exchange Act of 1934 Release Nos. 13308 and 13318, received 3/28/77.	98-99
9	Letter from Bradford Securities Processing Services, Inc. <u>re</u> Securities Exchange Act Release Nos. 13308 and 13318, received 4/12/77.	100-103
10	Letter from National Securities Clearing Corporation to Anthony C.J. Nuland, Associate Director, Division of Market Regulation, Securities and Exchange Commission <u>re</u> amending the proposed rule change, received 4/20/77.	104-105
11	Transcript of tape recording of open meeting of the Securities and	106-119

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Exchange to consider proposed rule changes filed by the National Securities Clearing Corporation, File Nos. SR-NSCC-77-1 and SR-NSCC-77-2, 4/21/77.

Order approving rule changes submitted by the National Securities Clearing Corporation (File Nos. SR-NSCC-77-1 and SR-NSCC-77-2), Securities and Exchange Act of 1934 Release No. 13456, 4/21/77.

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Document No. 1
The Application of the NATIONAL SECURITIES CLEARING CORPORATION for Registration as a Clearing Agency

File No. 600-15

ORDER GRANTING REGISTRATION AND STATEMENT OF REASONS

These are proceedings pursuant to Section 19(a)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(a)(1) (1975), as amended by the Securities Acts Amendment of 1975 (the "1975 Amendments"),¹ to determine whether to grant or deny the application of the National Securities Clearing Corporation ("NSCC") for registration as a clearing agency² pursuant to Section 17A of the Act, 15 U.S.C. 78q-1 (1975), and Rule 17Ab2-1 thereunder, 17 CFR 240.17Ab2-1. NSCC's application contemplates the performance by NSCC of the clearing and settlement operations currently performed by the American Stock Exchange Clearing Corporation ("ASECC"), National Clearing Corporation ("NCC") and Stock Clearing Corporation ("SCC").

Section 19(a)(1) of the Act provides that, upon the filing of an application for registration as a registered clearing agency pursuant to Section 17A of the Act, the Commission shall publish notice of the filing and afford interested persons an opportunity to submit written data, views and arguments concerning the application. Thereafter, the Commission either grants the registration or institutes further proceedings to determine whether registration should be granted or denied.

On March 29, 1976, the Commission gave notice of the filing of NSCC's application for registration.³ The importance of the application to the Commission's efforts to perfect the mechanisms of a national market system for securities⁴ and to facilitate the establishment of a safe and efficient national system for the clearance and settlement of transactions in securities,⁵ the complexity of the technical, legal and economic issues raised by the application, and the written data, views and arguments concerning the application submitted in response to the Commission's March 29, 1976, announcement led the Commission to conclude that further exploration of the issues raised by the application was desirable. Accordingly, on May 28, 1976, the Commission instituted these proceedings and provided an opportunity for oral presentation of data, views and arguments on June 16-18, 1976.⁶ On November 3, 1976, the Commission announced it was considering approving the NSCC application subject to four proposed conditions, requested public comment on the proposed conditions, and extended the time for concluding the proceedings in connection with the application to November 29, 1976.⁷

In the light of its experience in regulating securities markets, clearing corporations, securities depositories, transfer agents and brokers and dealers, the Commission reviewed and analyzed the many technical, legal and economic issues

raised by NSCC's application, submissions made in response to the application, and other presentations of data, views and arguments made in connection with these proceedings and in response to the Commission's request for comment on the proposed conditions to approval of the application. Thereafter, the Commission made specific determinations required by the Act and, in accordance with the Act's directive to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities, evaluated the application against the statutory findings and objectives of safety, efficiency, the use of new data processing and communications techniques, the linking of clearance and settlement facilities, the development of uniform standards and procedures, and reductions in unnecessary costs.⁸ In addition, and as required by the Act, the Commission considered the effects which the exercise of its authority to grant or deny NSCC's application for registration would have on the public interest, the protection of investors, the safeguarding of funds and securities and the maintenance of fair competition.⁹ On the basis of its review, analysis and evaluation of the NSCC application and a balancing of the concerns which the Commission must consider in using its authority under the Act to facilitate the establishment of a national clearing and settlement system,¹⁰ the Commission has concluded these proceedings and has determined to grant registration to NSCC subject to the terms of this order and to the four conditions and the directives set forth herein.¹¹

NSCC will be required to comply with those conditions to the satisfaction of the Commission before NSCC may begin operating, as a single integrated system, the clearing and settlement systems currently operated by ASECC, NCC and SCC. In the interim, NSCC must submit for Commission approval any proposed changes in the rules, operating procedures and facilities management arrangements of NSCC or any of its operating divisions which are in effect immediately following the issuance of this order.

In the Commission's view, establishment of the national system for the prompt and accurate clearance and settlement of transactions in securities contemplated by Section 17A of the Act requires that brokers and dealers located in New York City and elsewhere throughout the country have access, at a reasonable cost, to one or more entities through each of which brokers and dealers can efficiently and safely compare, clear and settle transactions in securities regardless of the market in which the transactions occur or the location of the other parties to the transactions. The Commission's determination to grant NSCC's registration is based on the Commission's conclusion that NSCC's registration, subject to the conditions contained in this order, is an essential step toward the establishment, at an early date, of a comprehensive network of linked clearance and settlement systems and branch facilities with the national scope, efficiencies and safeguards envisioned by Congress in enacting the 1975 Amendments.

The remainder of this order is organized as follows:

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The Paperwork Crisis

The Commission's action today is taken against the background of a severe operational and financial crisis of the late 1960's and the subsequent efforts of Congress, the Commission and the securities industry to diagnose and resolve the many serious problems in securities transaction processing that brought about the crisis.

During the late 1960's the securities industry experienced an explosion in trading volume. With some exceptions, the financial community lacked the systems, procedures, equipment and qualified back-office personnel necessary to handle the increased business.¹² Because the problems confronting the industry were industry-wide and could not be tackled in isolation, few immediate solutions were available. The ensuing breakdown of securities processing arrangements resulted in the near chaos described in the following excerpt from the Commission's *Study of Unsafe and Unsound Practices*:

Apart from the inability of broker-dealers to keep their records current, the number of errors in the handling and recording of transactions multiplied. The back offices of many a broker-dealer resembled a trackless forest. Since the broker-dealer industry is a highly interdependent community, the problems of the less efficient firms had a rippling effect on the entire broker-dealer community; and inter-dealer clearing systems, as well as the transfer facilities of banks, were similarly taxed beyond their capacities. The entire machinery for the delivery and transfer of securities and the concomitant remittance of funds became clogged. Even those broker-dealers who attempted belatedly to stem the tide by computerizing their operations or augmenting their back office personnel could not keep pace with the volume; in fact, they were caught on a worse treadmill in that, by the time they were able to research their errors of a given date, they were confronted with a greater number of errors to contend with. The expensive computerized hardware which was thrown into the breach malfunctioned; and, since parallel manual records were often not maintained during a reasonable trial period, the use of the computer increased the already existing confusion. Moreover, the employment of newly recruited and untrained or inadequately trained individuals who were put to work in the back offices resulted in a further increase in the number of errors. The combination of all of these factors culminated in such a critical predicament for some firms that they not only lost control of their records, but experienced a new phenomenon—the loss of control over the securities which were or were supposed to be in their possession for delivery, custody or safekeeping. The efforts by the Commission and the self-regulatory organizations to build a dike against this torrent proved of little avail [footnote omitted].¹³

During the paperwork crisis, the level of "fails to deliver" and

"fails to receive" was frequently cited as a measure of the securities industry's operational problems.¹⁴ In December 1968, member firms of the New York Stock Exchange, Inc. ("NYSE") had \$4.4 billion in "fails to deliver" and \$4.7 billion in "fails to receive."¹⁵ Brokers and dealers with fails to receive risked the possibility that the brokers and dealers failing to deliver would become insolvent and not complete the open deliveries; accordingly, even sound brokers and dealers became exposed to the risk of loss as a result of the operational and financial difficulties of the brokers and dealers with which they were obliged to do business.¹⁶

The confusion and delays in the back offices of brokers and dealers were magnified by inadequate clearance and settlement facilities, particularly in the over-the-counter ("OTC") area, and clogged transfer agent facilities.¹⁷ Systems designed for the three million share days of 1960 proved incapable of dealing with the thirteen million share days of the 1960's, and, as trading volume rose, so did the fails and unresolved differences of brokers and dealers.¹⁸ These developments so reduced the supply of securities available for delivery that lengthy delays were not uncommon and many record differences were never resolved.¹⁹ Although the Commission and the self-regulatory organizations attempted remedial measures, the fundamental nature of the industry's problems coupled with the absence of a pervasive regulatory authority over entities engaged in securities processing made these efforts generally unavailing.

During this period it was difficult, and in some cases impossible, for brokers and dealers to ascertain their own financial condition.²⁰ Those with regulatory responsibility over brokers and dealers were at an even greater disadvantage. Stock record differences and unresolved dividend receivables had grown to record levels.²¹ Yet, brokers and dealers found it difficult to obtain confirmation of their transfer positions from transfer agents and the Commission lacked the authority to impose a requirement for prompt confirmations by transfer agents.²²

As the industry struggled with operational difficulties, a different but equally critical problem evolved. In late 1969 the securities markets experienced a sharp decline in prices. Although the accompanying decline in trading volume eased some of the pressure on securities processing operations, the reduced volume also reduced commission revenues and the decline in market prices reduced the value of securities held in form and proprietary accounts.²³ Broker and dealer liquidations became common and, through the exposures represented by open fails, threatened the survival of otherwise sound firms which had dealt with the insolvents. The result of that operational and financial crisis was a massive collapse within the securities industry. More than 100 brokerage firms were forced into liquidation, causing financial loss to the investing public.²⁴

Commission and Congressional Reaction

The Commission responded to the paperwork crisis by

restructuring the regulatory framework governing the back-office operations of brokers and dealers. The Commission established new standards for the maintenance of books and records by brokers and dealers, imposed requirements for the custody, and limited use, of their customers' funds and securities, and tightened net capital requirements applicable to them.²⁵ The Commission reviewed changes in the securities processing operations conducted by subsidiaries of the national securities exchanges and the National Association of Securities Dealers, Inc. (the "NASD") to ensure that progress in processing was not achieved at the expense of investor protection; in particular, the Commission sought to ensure that funds and securities handled by clearing corporations and securities depositories were adequately safeguarded. In addition, through its review of exchange and NASD rule submissions pertaining to clearing and settlement, the Commission fostered expanded access to clearing corporations and depositories and the establishment of interfaces and links between securities processing entities.

Congress responded by enacting the Securities Investor Protection Act of 1970 (the "SIPC Act")²⁶ to protect customers from the consequences of broker and dealer insolvency. Under the SIPC Act, the accounts of broker and dealer customers are protected for up to \$50,000 for securities and cash, with a limitation of \$20,000 for cash, by a fund established from industry revenues and backed by drawing rights on the United States Treasury of up to \$1 billion. Concerned that there might be a recurrence of the widespread incidence of broker and dealer failures which led to passage of the SIPC Act, Congress directed the Commission to compile a list of unsafe and unsound practices employed by brokers and dealers in conducting their business, report to Congress on the steps being taken under existing laws, to eliminate these practices, and submit recommendations on additional legislation which might be needed to eliminate these unsafe and unsound practices.²⁷

In December 1971, The Commission submitted its *Study of Unsafe and Unsound Practices* to Congress. The Study stated that

There is no area of the securities business which offers more opportunity for reducing costs as well as exposure to the kind of disruption which resulted in loss to customers during the 1969-70 period, than the improvement and modernization of the systems for clearing, settlement, delivery and transfer of securities. It was the archaic method of achieving this simple objective which nearly drowned the financial community in a tidal wave of uncontrolled paper. It is clear that modern communications and computer technology have now advanced to a point where the transfer of stock ownership, the payment therefor, and the documents controlling and recording the transfer of ownership and payment can be dramatically simplified.²⁸

The Study noted that to ensure against future breakdowns from the significantly increased volume of securities transac-

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tions which would be necessary if the nation's capital needs were to be met in the years ahead, a modernized nationwide system for securities transactions should be created.²⁹ The Study recommended, among other things, that the Commission be given additional authority over the processing of securities transactions.³⁰

Concurrently with the Commission's preparation of its *Study on Unsafe and Unsound Practices*, the House and the Senate conducted extensive studies and hearings regarding the paperwork crisis and its aftermath which reached general agreement on the pressing need for improved securities processing systems.³¹ These studies and hearings demonstrated that, although broker and dealer front-office sales activities had increased extensively, back-office operations often relied on manual processing operations which had been conducted in the same manner for many years. In a typical brokerage house at least 30 different documents had to be prepared in executing and processing a single transaction, and in the case of one large brokerage firm at least 210 pieces of paper had been prepared in connection with a single transaction.³² In the absence of a nationwide clearing and settlement mechanism enabling them to participate in a single system, brokers and dealers were required to participate in several systems and thereby to incur increased costs of doing business. The lack of uniform methods of doing business and the failure of clearing and settlement entities to coordinate their various systems increased the brokers' and dealers' costs and their accounting and control problems. The fundamental weakness discerned by Congress was the absence of a mechanism to give direction to, and ensure cooperation and coordination among, the entities engaged in securities processing—clearing corporations, securities depositories, transfer agents and corporate issuers.

The 1975 Amendments

In March 1972, the Commission submitted to Congress the "Securities Transaction Processing Act of 1972," a bill intended to provide a basis for the development of an efficient national system for clearance and settlement of securities transactions under the Commission's guidance.³³ In addition to the Commission's bill, various bills designed to provide a basis for the development of an efficient nationwide system of clearance and settlement were introduced in both Houses of Congress in 1972, 1973 and 1975, culminating with the enactment of the 1975 Amendments, which were signed into law on June 4, 1975.³⁴

As expanded by the 1975 Amendments, one of the purposes of the Act is "to remove impediments to and perfect the mechanisms of . . . a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto. . . ." ³⁵ The 1975 Amendments added a new Section 17A to the Act in which Congress set forth its findings that the linking of all clearance and settlement facilities, the use of new data processing and communications techniques and the development of uniform standards and procedures for clearance and settlement

would reduce unnecessary costs and increase the protection of investors and persons acting on their behalf.³⁶

Section 17A(a)(2) of the Act requires the Commission "to use its authority under [the Act] to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities . . . in accordance with the findings and to carry out the objectives set forth in [17A(a)(1)]." In using its authority, the Commission is to have "due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies and transfer agents. . . ."

Section 17A(b)(3) of the Act provides that the Commission shall not grant registration as a clearing agency to an applicant unless the Commission determines, among other things, that (i) the applicant is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions, to safeguard securities and funds, and to carry out the purpose of Section 17A of the Act; (ii) the applicant's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds, to foster cooperation and coordination with persons engaged in securities processing and to remove the impediments to and perfect the mechanisms of a national system for the clearance and settlement of securities transactions; and (iii) the applicant's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Two basic themes which recur throughout the legislative history underlying the securities processing provisions of the 1975 Amendments are (i) the prevention of another paperwork crisis in the securities industry and (ii) the establishment of a safe, efficient and modern national clearing and settlement system.

The Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, the Senate version of the 1975 Amendments, describes the need for greater coordination among processing entities and standardization of forms and states that "[d]espite considerable progress in operational matters since the debacle of the late 1960's, the paperwork processing problems facing the securities industry remain extremely complex."³⁷ The Senate Report on S. 249 leaves to the Commission's expertise and experience in securities processing the task of shaping a national system to alleviate the problems of excessive processing costs and poor service to investors.

Without addressing the merits of any particular system or the shape a national clearing and settlement system should take, the Committee is persuaded that the present uncoordinated state of affairs with respect to securities processing should not be allowed to continue.³⁸

The Senate Report on S. 249 characterizes the accompanying bill as legislation designed to provide a comprehensive regulatory framework for the resolution of securities processing problems and the establishment of a national system.³⁹ The Report states "[t]he Committee expects the Commission to use the broad powers provided in the bill in a bold and effective manner to facilitate the rapid development of a nationwide system for processing securities transactions. . . .⁴⁰ In discussing the broad rulemaking authority over clearing corporations, securities depositories and transfer agents vested in the Commission under S. 249, the Report states that "[t]he Commission is expected to use this authority in order to facilitate the prompt development of an integrated national system for the clearance and settlement of securities transactions and the elimination or consolidation of duplicative facilities and procedures."⁴¹

The Senate Committee believed that reductions in processing expenses would be in the public interest because, by increasing brokers' and dealers' profits, the reductions would result in a healthier securities industry. The Senate Committee assumed that investors would benefit from reduced processing costs.⁴²

In discussing the Senate and House bills, the Conference Committee Report accompanying the 1975 Amendments observed:

To assure the development of a modern, nationwide system for the safe and efficient handling of securities transactions in a manner which best serves the financial community and the investing public, the Senate bill and the House Amendment directed the Commission to facilitate the establishment of the [national] system and centralized in the Commission the authority and responsibility to regulate, coordinate and direct the operations of all persons involved in the securities handling process.⁴³

Under Section 17A of the Act, the Commission has an obligation to consider the competitive implications of its actions.⁴⁴ The Commission is not required to justify that its actions be the least anticompetitive manner of achieving a regulatory objective.⁴⁵ Rather, in exercising its authority, the Commission must balance the maintenance of fair competition and a number of other equally important express purposes of the Act. Indeed, Section 17A specifically recognizes that need and directs the Commission, in exercising its mandate to facilitate the establishment of a national clearing and settlement system, to perform that balancing function "having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents. . . ."

Characteristics of a National System⁴⁶

The directive of the 1975 Amendments that the Commission use its authority to facilitate the establishment of a national

system animates the review, analysis, evaluation and balancing required of the Commission in determining whether to grant or deny NSCC's application for registration as a clearing agency. Consistent with that directive, the Commission must be attuned to the dynamic growth process of the nation's securities markets and the concomitant need for a national clearing and settlement system with the capacity to service, and the flexibility to adapt to changes in, the nation's capital-raising mechanisms. In response to those needs, the Commission has formulated the characteristics of a national clearing and settlement system which will advance the Act's several objectives by drawing on expertise acquired through experience in regulating the activities of clearing corporations, securities depositories, transfer agents, brokers and dealers, securities information processors and securities markets. In its formulation, the Commission has sought to reconcile the directives of Section 17A with the requirements of such diverse areas as trade comparison,⁴⁷ transfer agent operations,⁴⁸ other Congressionally-mandated programs for safeguarding securities processing activities⁴⁹ and the allocation of regulatory responsibilities.⁵⁰ The Commission has sought also to ensure that its formulation will be compatible with new technological developments.

The Commission believes that to satisfy the requirements of Section 17A of the Act and the other concerns affected by the operation of a national clearing and settlement system the system should: (i) process securities transactions by means, including book entry movement,⁵¹ suitable to the character of the issues processed;⁵² (ii) provide access, either directly or indirectly, to all broker and dealers and financial institutions;⁵³ (iii) enable participants to compare,⁵⁴ account for⁵⁵ and settle⁵⁶ through one entity all trades in securities included in the system, regardless of the location of the other party to the trade or the market in which the trade is executed ("one account processing");⁵⁷ (iv) enable participants to deposit and maintain their securities in a custodial account at the depository level which makes possible book entry movements between participants, to settle participants' clearing obligations, to effect pledges and to perform other functions which may be effected by book entry;⁵⁸ (v) enable participants to make a single daily money settlement, for both clearing obligations and depository-related movements;⁵⁹ and (vi) provide, in a book entry environment, same-day turnaround⁶⁰ at both the clearing corporation and depository levels.⁶¹

Book Entry Clearing The book entry clearing portion of the national system should have the following characteristics: (i) an accounting function which nets participants' securities positions daily and permits netted positions to be carried forward and netted against positions established on subsequent days ("continuous netting"); (ii) a trade guarantee as of settlement date;⁶² (iii) mark-to-the-market protection from settlement date onward;⁶³ (iv) one daily clearing position per issue for each participant; (v) a link between the continuous netting system and a depository to make possible automatic book entry delivery to satisfy short-valued positions⁶⁴ in the continuous netting system and to permit deliveries to, and receipts from, the continuous netting system at various

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remote locations; and (vi) a same-day turnaround capability for both securities received by a participant from the continuous netting system and securities delivered to a participant which the participant wishes to redeliver to the continuous netting system.

Non-Book Entry Clearing The non-book entry clearing portion of the national system, which could include low-volume clearing operations,⁶⁵ should guarantee transactions as of, and mark them to the market from, settlement date. In addition, subject to the limitations of certificate as opposed to book entry settlement,⁶⁶ same-day turnaround should be available for securities settled through the non-book entry portion of the system.

Comparison, Accounting and Settlement The national system should permit participants to elect to use all, or only a portion of, the system's clearing and settlement services. Accordingly, while a participant should be able to obtain one account processing through one clearing entity, the participant should be able also (i) to compare trades through the clearing entity affiliated with the marketplace in which the trade was executed and direct delivery of the compared trade to the clearing entity the participant selects to perform the accounting operation and (ii) to direct delivery of the securities settlement instructions generated by the accounting operation to the depository entity the participant elects to use for securities settlement. It does not appear necessary at this time for the national system to provide participants with an ability to direct delivery of securities settlement instructions to a depository other than the one linked to the clearing entity which generated the instructions.⁶⁷ Nonetheless, because of the possibility of competitive innovation at the depository level—including development of transfer agent depository ("TAD") systems⁶⁸—the national system should not preclude developments which would permit a participant to direct delivery of securities settlement instructions to any depository entity.

Depository Capabilities The depository portion of the national system should provide the following services: (i) ability of a participant to make valued and free securities deliveries by book entry;⁶⁹ (ii) dividend and proxy protection for securities left on deposit; (iii) facilities for the deposit and withdrawal of securities at locations remote from central depositories;⁷⁰ and (iv) same-day turnaround for (A) free or valued book entry deliveries to a participant's depository account from the clearing portion of the system, (B) free or valued book entry deliveries to a participant's depository account through the depository, and (C) deposits to a participant's depository account.

The depository portion of the system should be able to perform all securities processing functions which may be effected by book entry. Currently, these functions include free and valued movements of securities and movements to effect pledges and loans of securities. The depository portion of the system should permit withdrawals of certificates in street name⁷¹ and in registered form and expedited withdrawals of

certificates. Also, the depository portion of the national system should be designed to be compatible with TAD programs, transfer agent custodian ("TAC") programs,⁷² and other developments in the transfer agent area which reduce certificate movement.

The Commission believes that a national system with the foregoing characteristics would protect investors by providing prompt and accurate clearance and settlement of securities transactions and by safeguarding securities and funds.⁷³ In addition, by using advanced data processing and communications techniques, linking clearance and settlement facilities and establishing uniform standards and procedures the system would reduce the unnecessary costs imposed on investors by inefficient clearance and settlement procedures and would increase the protection of investors.⁷⁴ Specifically, the system would (i) reduce the cost to participants of relating to present clearing, settlement and depository systems;⁷⁵ (ii) reduce the average delivery time for the settlement of securities transactions and the carrying costs associated with settlement activity; (iii) simplify recordkeeping; (iv) enhance the ability of clearing agencies and other self-regulatory organizations to monitor the clearing positions of participating participants who are becoming overextended;⁷⁶ (v) increase insulation of participants (and their customers) from the effects of another participant's insolvency; and (vi) reduce the number of lost or stolen certificates.⁷⁷

Statutory Determination to be Made in Connection with NSCC's Registration

The general mandate contained in Section 17A(a) of the Act is implemented by, among other things, Section 17A(b), which provides for the registration of clearing agencies. Paragraph (3) of Section 17A(b) provides that the Commission may not register a clearing agency unless the Commission makes the determinations contained in subparagraphs (A)—(I) of paragraph (3) which, in general, require the Commission to determine that the clearing agency is organized and has the capacity, and its rules are designed, to carry out the purposes of Section 17A of the Act.

Pursuant to Rule 17Ab2-1 under the Act,⁷⁸ an applicant for registration as a clearing agency may apply for full registration under the Act, in which case the Commission must make all the determinations called for by subparagraphs (A) through (I) of Section 17A(b)(3) in order to register the applicant. Alternatively, pursuant to paragraph (c)(1) of the Rule, an applicant can apply for a limited registration which terminates 18 months from the date on which it becomes effective, in which case the Commission may register the applicant while making fewer than all the determinations called for by subparagraphs (A) through (I). In accordance with paragraph (c)(2) of the Rule, at the expiration of the first nine months of an 18-month registration pursuant to paragraph (c)(1) of the rule, the Commission must either grant registration without exempting the registrant from one or more of the subparagraphs (A) through (I) determinations or institute proceedings to determine whether registration should be

denied at the expiration of the 18-month registration.⁷⁹

In granting NSCC's application for registration as a clearing agency for a period of 18 months the Commission is determining, in accordance with Section 17A(b) of the Act and Rule 17Ab2-1 thereunder, that: (i) NSCC is "so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions . . . to safeguard securities and funds in its custody or control . . . to comply with the provisions of [the Act] and the rules and regulations thereunder . . . and to carry out the purposes of [Section 17A of the Act]."⁸⁰ (ii) NSCC's rules "do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants,"⁸¹ (iii) NSCC's rules are designed "to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds . . . in [its] custody or control . . . to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions [and] to remove impediments to and perfect the mechanism of a [national clearing and settlement system], and, in general, to protect investors and the public interest . . .,"⁸² and (iv) NSCC's rules do not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."⁸³

In accordance with the requirements of Sections 17A(a) and (b) of the Act, the Commission is considering also whether NSCC is so organized and has the capacity to (i) protect investors and those facilitating transactions on behalf of investors, (ii) reduce unnecessary costs resulting from inefficient clearing and settlement procedures, (iii) take advantage of the efficiencies and safety made available by new data processing and communications techniques and (iv) provide for the linking of all clearing and settlement facilities and the development of uniform standards and procedures.⁸⁴

The Commission's determination concerning such matters as safeguards, efficiencies, cost reductions and effects on competition, are being made in the context of the Commission's statutory responsibility to facilitate the establishment of a national clearing and settlement system which will have the characteristics called for by the Act, be compatible with future developments in the structure of the nation's securities markets and have the operational capability to avoid a future paperwork crisis.

THE NSCC APPLICATION

Background to the Application

The Commission's review of NSCC's application has been made in the context of the progress in clearing and settlement achieved during the last decade and the efforts of entities engaged in securities processing—brokers and dealers, clearing corporations, securities depositories, transfer agents, institutional investors, securities exchanges and the National Association of Securities Dealers, Inc. (the "NASD")—to establish clearing and settlement systems and

to integrate them into a national system. The importance of NSCC's establishment to that progress and the significance of the accords and compromises on which NSCC's establishment is based can be gauged only against the backdrop of a decade of industry effort.

Efforts to establish clearing and settlement systems were conceived and initiated before and during the paperwork crisis by the exchanges and the NASD, which organized and funded separate subsidiaries to perform clearing, settlement and depository functions. The securities processing subsidiaries were closely-linked to their parent organizations and, in addition to performing processing functions, provided a variety of other services for their participants and parent organizations. Establishment of the processing entities entailed substantial expenditures for the development of systems and computer programs, the purchase or lease of computers, peripheral equipment and working space and the retention and training of personnel. Generally, the expenditures were funded by contributions from the parent organizations and clearing fees paid by the entities' participants.

Although the severity of the paperwork crisis might have been tempered had the exchanges and the NASD taken initiatives earlier, the continually growing paper onslaught of the late 1960's was unaffected by the systems then being considered and developed and was little deterred by the untested systems then being implemented. Against the stark background of confusion, loss of confidence, and broker and dealer liquidations left by the paperwork crisis, the entities engaged in securities processing began a program of reconstruction designed to build on the initiatives taken already and to advance securities processing beyond the possibility of a recurrence of that crisis.

During the early 1970's those processing entities developed and implemented substantial improvements in their securities processing operations, including the automation of manual functions, the establishment of new and more efficient clearing and settlement systems, a rapid expansion in the number and use of securities depositories, and an intensification of efforts to establish interfaces among previously unrelated clearing and settlement systems. The extent of the improvements was highlighted in January and February 1976 when securities processing systems successfully handled average daily trading volume on the NYSE of 12 to 13 million shares which had overwhelmed the securities industry in the late 1960's.

Despite these improvements, only modest progress was made toward the establishment of a comprehensive national clearing and settlement system. In part, the lack of progress was attributable to the absence of a centralized, decision-making authority in the securities processing area and a consequent tendency for processing entities to seek immediate solutions to their individual problems rather than industry-wide solutions to the larger problems which confronted all the entities. The lack of progress was attributable also to the close operational and financial relationships between secur-

ties processing subsidiaries and their parent organizations which made them initially reluctant to participate in plans to establish a national system which, the organizations recognized, would entail a diminution in their control over the services and revenue streams provided by the processing subsidiaries.

An ambitious effort to establish a national system was begun in December 1973 when the NASD and the NYSE submitted to the Commission a memorandum of understanding providing, among other things, for the establishment of the National Securities Processing Committee, which was to develop a plan for a single national facility for clearing and settling securities transactions.⁸⁵ Although the Committee was organized by, and its membership included representatives of, the NYSE, the NASD and other self-regulatory organizations and their processing subsidiaries, a majority of the Committee's members were brokers and dealers. The Committee met a number of times during 1974 and early 1975 but was unable to reach agreement on a program for the establishment of a national clearing and settlement system. Nevertheless, the Committee's deliberations were instrumental in improving cooperation among existing clearing and settlement entities and in developing a consensus on the operating characteristics of a national clearing and settlement system.

Much of the Committee's effort was directed toward eliminating what its members viewed as the inefficiencies represented by the location and operation, within several blocks of each other in downtown Manhattan, of three high-volume clearing and settlement entities with essentially similar systems and substantial membership overlaps; ASECC, NCC and SCC.⁸⁶ The members believed these inefficiencies created costs for brokers and dealers by requiring their back-office operations to interact and reconcile end of day balances with multiple clearing corporations and by subjecting them to clearing and settlement fees which supported the operational and administrative redundancies of three clearing corporations. After the Committee disbanded, its former members and other participants in securities processing operations continued their efforts to establish a national clearing and settlement system, including the elimination of perceived inefficiencies in securities processing in New York City.

During 1973 and 1974, low OTC transaction volume caused NCC, the NASD's securities processing subsidiary, to experience significant operating losses. Since NCC was making substantial equipment lease payments as its own facilities manager, NCC and the NASD approached the Securities Industry Automation Corporation ("SIAC")⁸⁷ and Bradford National Corporation ("Bradford") to determine the feasibility of having NCC's processing performed by an outside facilities manager under an arrangement which would avoid further loss to NCC. On October 1, 1974, following submission of bids by SIAC and Bradford and comparison of the bids with each other and with an internal cost reduction program proposed by NCC's operating staff, the NASD and NCC entered into a processing agreement with Bradford National

Clearing Corporation ("BNCC"), a Bradford-guaranteed subsidiary established to perform NCC's processing. Under the agreement, NCC was entitled to terminate BNCC as its processor before the expiration of the agreement's five-year term upon payment of an early termination penalty.⁸⁸

In April 1975, SIAC submitted a formal proposal to NCC to perform all of NCC's processing functions. NCC initially rejected the proposal. Subsequently, NCC's parent organization, the NASD, and SIAC's parent organizations, the Amex and the NYSE, sponsored the establishment of committees to negotiate an agreement for combining the processing functions of ASECC, NCC and SCC.⁸⁹ The committee sponsored by the NASD was composed of NASD members who used NCC's services, and the committee sponsored by the Amex and the NYSE was composed of members of the two exchanges who, through ASECC and SCC, used SIAC's clearing and settlement services. In July 1975, the two user committees reached a nine-point "agreement in principle" providing for the merger of ASECC, NCC and SCC into a single, New York-based clearing and settlement facility.⁹⁰

Under the agreement in principle, the Amex, the NASD and the NYSE agreed to transfer the operations of their wholly-owned subsidiary clearing corporations, ASECC, NCC and SCC, to a new entity which would be controlled by its participants rather than by the parent self-regulatory organizations. The agreement in principle specified that transfer should be accomplished in a way which "would avoid any loss to the respective parent companies of the clearing corporations" and that SIAC would be the processor for the new entity. Thereafter, the NCC and SIAC user committees formed a number of specialized subcommittees which, during late 1975 and early 1976, worked out the details of NSCC's establishment in accordance with the nine-point agreement. NSCC was incorporated on March 17, 1976, and on March 29, 1976, filed its application for registration as a clearing agency.

The Application

NSCC's application for registration comprises 25 documents filed on 12 different occasions between March 29, 1976, and September 27, 1976, and is supplemented by information contained in related correspondence and developed during the course of the oral presentations of data, views and arguments.⁹¹ Much of NSCC's application consists of documents necessary to transform the assortment of corporate arrangements under which the Amex, NASD and NYSE have in the past provided clearance and settlement services to their members into a single clearance and settlement corporation controlled by the users of those services.

In legal structure the clearance and settlement operations of the Amex, NASD and NYSE are separate wholly-owned subsidiaries, ASECC, NCC and SCC; each clearing corporation is, however, essentially a shell corporation with relatively limited assets and a small number of administrative employees. The extensive data processing and clerical operations

required to accomplish clearance and settlement are housed in or furnished by other corporate entities. As a result, combining the three clearing operations is not merely a matter of transferring control over three corporate shells but requires, in addition, recasting the separately housed processing and clerical functions which provide the underlying services.

In the case of the Amex and the NYSE, data processing and clerical operations are performed for the clearance and settlement subsidiaries, ASECC and SCC, by SIAC, a jointly-owned Amex and NYSE subsidiary which leases computers, peripheral equipment and space under long-term agreements and employs a large clerical staff dedicated in substantial part to the performance of clearance and settlement operations. Unlike ASECC and SCC, NCC initially operated its clearance and settlement operations, employing its own clerical and related personnel and itself entering into the necessary equipment and space lease arrangements. In 1974, however, NCC retained BNCC as securities processor, transferred to BNCC or terminated most non-administrative personnel and became a shell subsidiary of the NASD. Unlike ASECC and SCC, however, NCC did not use a corporate affiliate to conduct its clearance and settlement operation.

The description of NSCC's application contained in this order outlines the steps of a transformation essentially intended to accomplish four results. First, the corporate structures of, and the operations performed for, ASECC, NCC and SCC are to be combined into a single administrative and operational structure. Second, ownership of the new clearing corporation is to be structured in a manner which will preserve NSCC's status as a "clearing corporation" under the applicable Uniform Commercial Code provisions.⁹² Third, the current users of ASECC, NCC and SCC are to exercise direction over the management and operations of NSCC. And, fourth, the combination is to be effected in a manner which will ensure that the Amex, NASD and NYSE are compensated to their satisfaction for the operations over which control is being ceded to NSCC's user board. The summary does not describe changes which would result from NSCC's satisfaction of the conditions to its registration contained in this order.

Following the grant of NSCC's registration, ASECC, NCC and SCC will each transfer to NSCC their clearing agency operations, including the future revenues generated by the operations. In addition, ASECC and SCC will each transfer \$300,000 in cash to NSCC in exchange for 10,000 shares of NSCC common stock, and NCC will transfer to NSCC assets valued at \$900,000 in exchange for 10,000 shares of NSCC common stock and a \$600,000 promissory note of NSCC. The 30,000 shares of NSCC common stock to be issued to ASECC, NCC and SCC will constitute all NSCC's outstanding common stock and will be subject to restrictions on transfer designed, among other things, to preserve NSCC's status as a "clearing corporation" under the applicable Uniform Commercial Code provision. In addition, the rights and obligations among each of the combining clearing agencies and its participants will be assigned to and assumed by

NSCC. The clearing funds of the combining entities will be transferred to NSCC, and NSCC will assume certain other liabilities of the combining entities.

Following transfer to NSCC of the clearing agency operations of ASECC, NCC and SCC and their contributions of cash and assets, NSCC will operate the business of each transferor clearing agency as a separate NSCC division, i.e., the ASECC Division, the NCC Division and the SCC Division. Each division will operate under substantially the same rules, procedures and agreements used by the division's predecessor clearing agency.

Operation under the divisional structure, which NSCC has estimated would last approximately 120 days, is referred to as "Phase I" of the merger. SIAC prepared much of the technical portions of NSCC's application. During Phase I, SIAC will continue its current role as processor for ASECC and SCC. In addition, building in part on the work done already in preparing in technical portions of the application, SIAC will develop a plan to convert the ASECC-SCC and NCC systems into a single combining desirable aspects of both. Operating rules and procedures for the combined system will be prepared by NSCC and SIAC and submitted to the Commission for review and approval before they could be implemented. Following Commission approval of the combined system's rules and procedures, NSCC and SIAC will begin to operate the combined system, thereby initiating "Phase II" of the merger plan.

Facilities Management Pursuant to a facilities management agreement between NSCC and SIAC (the "Management Agreement"), all NSCC securities processing functions, including those performed currently for NCC by BNCC, will be performed by SIAC.⁹³ Under the Management Agreement, SIAC will be obligated to charge NSCC no more than SIAC's costs for providing the services covered by the Management Agreement. NSCC will have the right to monitor all phases of SIAC's NSCC operation in order to ensure that the operation was adequate and in compliance with statutory criteria. Furthermore, NSCC will have the right, either itself or through its agents (including its independent public accountants), to review SIAC's operation and evaluate the accuracy and appropriateness of the cost allocations made by SIAC in determining its cost of performing processing for NSCC.

The Management Agreement will have a term of five years, at the expiration of which NSCC will have no further obligation to SIAC and SIAC will be obligated to facilitate the transfer of the NSCC operations to any processor selected by NSCC. Any time after the second year of the Management Agreement, NSCC will have the right to terminate the agreement upon six months written notice, which may be given during the second year, and upon NSCC's agreement to pay SIAC a monthly fee of \$225,000 from the termination date to the end of the Management Agreement's term. The amount of NSCC's monthly payment will be reduced by \$100,000 if NSCC assumes responsibility for SIAC's lease of space used for the NSCC operation and by an additional \$25,000 if

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NSCC assumes SIAC's severance obligations to employees engaged in the performance of the NSCC operations.

User-Control NSCC will operate under the governance of a 16-member Board of Directors, 12 members of which will be NSCC participants ("participant directors"). ASECC, NCC and SCC each will have one representative on the Board ("shareholder directors"). The sixteenth member will be the president of NSCC (the "management director").

Annually after the first year of NSCC's operation, one shareholder director's seat and four participant directors' seats will be open for election. The shareholder director's seat will be filled with the nominee of the shareholder whose seat has become vacant. An annually elected nominating committee will select four participant director candidates and also will select the nominating committee for the following year.⁹⁴

After the second year of NSCC's operation participant directors will be elected for three-year terms. No participant director will be permitted to serve as a director for more than five consecutive years or to serve on the nominating committee while a director or during the year following the expiration of the director's term of office. No member of a nominating committee can be included in the slate of director nominees selected by that nominating committee and no member of a nominating committee can serve consecutive terms. Neither a shareholder director nor the management director will be permitted to be a member of either the NSCC board's audit committee or the board's operations committee; the latter will, among other things, review the performance of SIAC as NSCC's facilities manager.

The Amex, the NASD and the NYSE will have a veto over NSCC's adoption of new rules, other than those which NSCC would be required to adopt pursuant to statutes, ordinances, rules or regulations applicable to NSCC. The veto can be exercised only if the proposed NSCC rule would affect the ability of the party exercising the veto to meet any statutory responsibilities it might have for the settlement of securities contracts.

Payments to the Amex, NASD and NYSE The NSCC application contains a shareholder's agreement among the ASECC, NCC and SCC, to which the Amex, NASD, NYSE and NSCC are parties. The agreement provides that, for a period of five years from the date of the agreement's execution, the Amex, the NASD and the NYSE will receive \$0.12 for each buy and sell side of trades in equity securities, or warrants to purchase equity securities, executed on their respective markets and compared through NSCC. The \$0.12 fee will not apply to trades cleared through NSCC but executed on exchanges other than the Amex or NYSE nor will it apply to OTC transactions not compared through NSCC. The total payments to be received by the self-regulators in any one year will be limited to \$550,000 for the Amex, \$1,000,000 for the NASD and \$3,000,000 for the NYSE.⁹⁵

The amount of the fee (\$0.12) was derived by determining that per-side charge which would yield the NYSE \$3,000,000 annually based on a projected NYSE daily transaction volume of 17 million shares. The \$3,000,000 was based on the average annual revenues which the NYSE has derived from SCC for the past ten years. That amount was established as the ceiling for the NYSE, and the ceilings on the amounts to be received by the Amex and the NASD were derived by applying the \$0.12 per-side fee to their projected annual transaction volume.

The agreement states that the payments will be made in return for furnishing certain regulatory services to NSCC consisting of conducting periodic examinations of the books, records and operations of NSCC participants; monitoring the financial and operational condition of NSCC participants; investigating the financial and operational conditions of entities which apply for participation in NSCC; and apprising NSCC of any unusual market conditions which affect securities cleared by NSCC. Each of the self-regulators will examine those NSCC participants for which the self-regulator has been designated by the Commission to conduct examinations for compliance with the applicable financial responsibility rules, as well as such participants as NSCC might direct for which none of the three self-regulators has been designated.

The shareholders' agreement provides that after two years the self-regulators and NSCC shall "review the provisions of [the contract] as to the [s]ervices and the payments therefor in order to determine whether such provisions should be amended or modified. . . ." The agreement does not permit renegotiation of the level of payment or the level of services at any time during the agreement's five-year term, except by mutual agreement of the parties.

Services to be Provided During Phase I, NSCC plans to offer all services now offered by either ASECC-SCC or NCC. During Phase II, duplicative services will be combined so as to insure that no participant in either organization will experience a reduction in the kinds and levels of service currently available. NSCC's services will be available, either directly or indirectly, to all current participants in ASECC-SCC and in NCC and access to NSCC's services will be available to all qualified entities. NSCC's application states that fees to participants will be set by NSCC's board of directors and will be based on the cost to NSCC of providing its services.⁹⁶ NSCC will attempt to establish a contingency fund from its revenues but, in general, does not propose to earn profits and will not pay dividends on its shares.

Relationship to Securities Depositories Because NSCC's application envisions NSCC's use of the current ASECC-SCC system, securities settlement⁹⁷ for NSCC transactions will have to be made in DTC and all NSCC participants will be required to be participants in DTC.⁹⁸ In order to provide access to DTC for those participants in NCC who are not currently DTC participants and who do not believe their clearing volume warrants DTC participation, NSCC will provide sponsored accounts in DTC.⁹⁹ Although securities settle-

ment for transactions cleared through NSCC will occur in DTC, money settlement for the transactions will occur in NSCC. In anticipation of the ASECC-SCC and NCC operational combination, DTC has initiated a program for expanding the list of securities eligible for deposit to include all issues currently eligible for deposit in NCC's system. NSCC does not plan to begin Phase II until the DTC expansion is complete.

TADDC, a securities depository which ultimately intends to serve as the bridge for the implementation of the TAD concept, currently has an interface with NCC through which NCC participants deliver and receive securities through TADDC in settlement of NCC obligations. NSCC intends to work out an arrangement with TADDC before the start of Phase II operations under which NSCC users will be permitted to receive from or to deliver to NSCC securities on deposit with TADDC.

Trade Comparison NSCC will continue to perform comparison for Amex and NYSE transactions and will perform comparison for OTC transactions between NSCC participants. OTC transactions between participants in a clearing corporation other than NSCC will be compared by the other clearing corporation or by a clearing corporation retained by it to perform the OTC comparisons. OTC transactions between participants in two different clearing corporations will be compared by a clearing corporation other than NSCC.

From the beginning of Phase II operations, NSCC will enable its participants located in New York City to submit Amex, NYSE and OTC transactions to NSCC for comparison. In the plan described in NSCC's application, NSCC participants located outside New York City, and relating to NSCC through the former NCC regional network, will be able, as they are currently, to submit OTC transactions for comparison during Phase I but will not be able to submit Amex and NYSE transactions for comparison until some time after the initiation of Phase II.

Participant Qualifications Any entity will be able to participate in NSCC, subject to qualification standards based on financial and operational ability.

Cost Savings In its application, NSCC identified two categories of cost savings which will result from the initiation of Phase II operations: (i) cost savings from combining the operations of ASECC-NCC and SCC, including the elimination of duplicate personnel, operations and equipment; and (ii) cost savings to current participants in either or both ASECC-SCC and NCC through, among other things, combining back-office functions, reducing interest costs and delivery fees and standardizing forms and schedules. NSCC estimated that in Phase II the annual combined savings from both categories will be between \$12.4 million (assuming low transaction volume) and \$17.4 million (assuming high transaction volume).

At the request of the Commission's staff, NSCC included a

comparison of the savings anticipated from consolidation of ASECC-SCC and NCC ("Model I") with the savings which could be anticipated were ASECC-SCC and NCC to compete and interface with one another, each establish and maintain a network of regional facilities comparable to the existing NCC network and each offer its participants the ability to clear and settle through it all Amex, NYSE and OTC transactions ("Model II"). After comparing the clearing corporation operation savings of Model I and Model II, NSCC concluded that Model I would be less expensive than Model II by \$7.2 to 9.4 million a year, depending on the volume of transactions processed.

TERMINATIONS WITH RESPECT TO NSCC

Scope of Consideration

As noted above, the Commission's decision to grant registration to NSCC grows out of the Commission's landmark study of the problems that precipitated the paperwork crisis in the late 1960's and the Commission's subsequent extensive experience in regulating the securities markets and their securities processing adjuncts. In view of the Commission's expertise as the agency charged with overseeing the Nation's securities markets, Congress directed the Commission to use its pervasive authority under the Act to facilitate the establishment of a national system in accordance with broadly stated objectives. As the Senate made clear, that new authority conferred on the Commission "is designed to eliminate any possible ambiguity and thereby avoid any delay in achieving comprehensive regulation of the processing of securities transactions."¹⁰⁰

In exercising the plenary power conferred on it by Congress, the Commission is guided not only by the specific Congressional findings in Section 17A of the Act but also by the overall objectives of the Act to establish and maintain a comprehensive pattern of regulation and control of transactions in securities as commonly conducted upon securities exchanges and in the OTC markets, and of practices and matters related thereto, as well as to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto.¹⁰¹

The Commission is guided also by the general need to consider the impact of its actions on competition and to balance the need for full and effective competition against the other Congressional purposes set forth in the Act. In adopting the 1975 Amendments, Congress recognized that competition is itself an effective regulator and that the Commission's pattern of regulation should give appropriate attention to ways of maintaining competition among brokers and dealers as well as among market centers, clearing agencies and transfer agents. As indicated previously, in adopting the 1975 Amendments, Congress declined to require the Commission to cleave to a "least anticompetitive" standard in making rules and regulations under the Act. Instead, Congress determined

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to grant broader discretion to the Commission and to view the need for competition in the context of the Act as a whole and its several objectives so that burdens on competition could be accepted where necessary or appropriate in furtherance of the purposes of the Act. Indeed, Section 17A itself directs the Commission, in exercising its authority over the securities processing area, to balance the maintenance of fair competition against the other statutory objectives of "the public interest, the protection of investors [and] the safeguarding of securities and funds. . . ."¹⁰²

The Commission's action today is consistent not only with the specific directives of Section 17A but also with the broader pattern of the Act,¹⁰³ including the establishment of a national market system affording professionals engaged in securities transactions access to multiple market centers. The effective operation of such a market system is dependent in part on the existence of a national clearance and settlement system capable of receiving input from multiple market centers, identifying the input to individual participants in the market system and generating settlement instructions which net offsetting securities and money settlement obligations. Accordingly, early achievement of a national market system is dependent, in large measure, on prior or at least contemporaneous establishment of a national clearance and settlement system.

In making the determinations set forth in this order, the Commission has carefully considered all the data, views and arguments submitted and presented orally¹⁰⁴ during the course of its extensive deliberations on this matter and in response to the Commission's release of the proposed conditions to NSCC's registration. The Commission has reached its own judgments as to the conditions under which the application should be granted after considering the comments expressing a concern about NSCC's potential effects on competition among clearing agencies, securities exchanges and facilities managers. The Commission's focus, however, has been on the several purposes of the Act and in particular the need to avoid the delay in the establishment of a national market system which would result from the absence of an efficient national system for clearance and settlement. The Commission did not, and indeed could not, limit the scope of its consideration to Section 17A; rather the Commission has considered NSCC's application in terms of the overall pattern of progress and change that is now occurring in response to the 1975 Amendments.

In order to make the basis of its policy determinations clear, the Commission has set forth in some detail the various considerations that have shaped its decision. While the need to keep this order to a reasonable length precludes detailed explanation of each facet of the matters considered by the Commission, an attempt has been made to furnish wherever appropriate a statement of the reasons supporting the Commission's determinations.¹⁰⁵

Reaffirmation of Determinations Made Previously

Since NSCC will assume the functions of existing clearing
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agencies whose registrations have already been granted under the Act, the Commission's reaffirmation today of the determinations made against the background of the Commission's experience with operations of those registered entities. In addition, the Commission has decided to make additional determinations under Section 17A of the Act with respect to NSCC. Both the reaffirmed determinations and the new determinations are discussed below.

Safeguards and Fixing Rates or Fees On December 1, 1975, in registering ASECC, NCC and SCC—the clearing corporations whose operations are to be performed by NSCC—the Commission determined with respect to each that (i) it is so organized and has the capacity to safeguard securities and funds in its control or for which it is responsible; (ii) its rules do not impose any schedule of prices or fix rates or other fees for services rendered by participants; and (iii) its rules assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

Those determinations, in each case, required a full review of the registrant's rules, procedures and operating capacity and a determination that the registrant's physical security, procedures for handling and safeguarding funds and securities, reconciliation procedures, insurance program, operating systems, back-up facilities, credit policies and mark-to-the-market and participants' fund policies were adequate for the safeguarding of funds and securities. Since December 1, 1975, the Commission has monitored the operations of ASECC, NCC and SCC and, pursuant to Sections 17A and 19(b) of the Act, has reviewed and approved the rule changes each has put into effect.

The NSCC application contemplates that each of the systems reviewed by the Commission in December and found to satisfy the foregoing determinations will continue to operate under its current rules and in the manner it currently operates until NSCC submits, and the Commission approves, rule changes for the operation of the Phase II integrated system. Accordingly, the Commission reaffirms the determinations made previously with respect to ASECC, NCC and SCC in now finding that (i) NSCC is so organized and has the capacity to safeguard securities and funds in its control or for which it is responsible; (ii) NSCC's rules do not impose any schedule of prices or fix rates or other fees for services rendered by participants; and (iii) NSCC's rules assure that safeguarding of securities and funds which are in its custody or control or for which it is responsible.

Protection of Investors While broader than the findings concerning safeguards, the determination that NSCC's rules are designed to protect investors and the public interest is based on the determination that NSCC's rules are designed to assure the safeguarding of funds and securities entrusted to NSCC by its participants. The protection of NSCC's participant brokers and dealers, bank and financial institutions inures to the benefit of those who invest through NSCC's participants. Having reaffirmed its previous determinations

with respect to the safeguards of ASECC, NCC and SCC and based on its analysis of and experience with the operations of those entities since December 1, 1975, the Commission has determined that NSCC's rules are designed to protect investors and the public interest.

In reaffirming its earlier determinations, the Commission recognizes, as it did in making the original determinations with respect to ASECC, NCC and SCC, that the development of a national clearance and settlement system is an evolving and dynamic process. While the Commission has reached certain conclusions concerning the likely effects of NSCC's registration based on the Commission's experience and evaluation of current trends, the Commission has been aware of the difficulties of attempting to predict the future in a changing environment which involves the expanding use of new technologies. Recognizing its responsibility to remain alert to shifting trends in the markets as well as in the clearing agencies serving those markets, the Commission expects to monitor the operations of ASECC, NCC and SCC in their capacity as divisions of NSCC and to reconsider, as appropriate, the determinations which it has made today.¹⁰⁶

Determinations Not Involving Conflicting Data, Views and Arguments

Capacity to Facilitate and Promote the Prompt and Accurate Clearance and Settlement of Securities Transactions
The Commission has determined that NSCC has the organization and capacity to facilitate, and that NSCC's rules are designed to promote, the prompt and accurate clearance and settlement of securities transactions. During Phase I, NSCC's operations and rules will be the current operations and rules of ASECC, NCC and SCC; accordingly, at this time, the Commission's findings are made with respect to those operations and rules.

The rules of ASECC and SCC and their combined operations, which are run by SIAC, provide participants with prompt and accurate service. The efficiencies and cost savings afforded today by ASECC, NCC and SCC have taken years to develop.¹⁰⁷ While the registration of NSCC is only a first step toward the ultimate development of the national system envisioned by the Congress, it is an important step. The technical achievements realized thus far, and now to be augmented by the establishment of NSCC, hold out important promise for the future and impel the Commission toward the conclusion that approval of the registration is critical to the achievement of the national system.

Both the ASECC and SCC systems operate in a continuous netting mode, are interfaced with three other clearing systems and enable participants to make all settlements in DTC by book entry. Those advances enable participants in the systems to reduce significantly the number of settlements which must be made by physical delivery of securities certificates and anticipate the statutory goal of immobilization of the securities certificate in connection with the settlement of securities transactions among brokers and dealers.¹⁰⁸ In

addition, the ASECC and SCC systems provide a local envelope delivery service which simplifies the settlement of transactions not completed by book entry. NCC's rules and operations also provide prompt and accurate service. Like ASECC and SCC, NCC's system operates in a continuous netting mode, is interfaced with PCC's OTC clearing operation, provides local and regional envelope delivery services and has a "free position" (a depository-equivalent account included in NCC's clearing operation) which is interfaced with both DTC and TADDC for book entry settlement of continuous netting transactions.

As noted above, the Commission's determinations made today relate to Phase I of the proposed NSCC operation. Before the commencement of Phase II, the Commission will consider the same determinations with respect to the envisioned NSCC integrated system as it is then to be constituted. The Commission expects to be able to assess at that time the extent to which NSCC can implement its plans for an integrated system to (i) combine the best features of both the ASECC-SCC and NCC systems by including, among other things, the current same-day turn-around features of the ASECC-SCC system and the NCC regional delivery network; and (ii) provide advantages not available in either of the current systems, such as one account processing¹⁰⁹ for Amex, NYSE and OTC transactions of all NSCC participants.

Capacity to Take Advantage of New Data Processing and Communications Techniques
Because the equipment and techniques employed by clearing agencies—computers, peripheral equipment and communications systems—are developed in a wider arena than securities processing, they usually are developed without specific reference to the needs of or developments in securities processing. Accordingly, a high degree of technical proficiency is often needed to evaluate new systems and new technologies for, and to envision their possible use in, the clearance and settlement of securities transactions. In their achievements to date, ASECC, SCC and NCC have demonstrated an ability to adapt new systems to their needs; the existing efficiencies they have accomplished, as well as those realized by the proposed facilities manager SIAC, argue strongly that NSCC too will exhibit the requisite proficiency.

Accordingly, on the basis of the data, views and arguments presented to the Commission, which did not contest NSCC's abilities in this regard,¹¹⁰ as well as its own familiarity with developments to date,¹¹¹ the Commission has determined that ASECC-SCC and NCC have, and NSCC will have, the ability to analyze the need for and take advantage of new data processing and communications equipment.

Determinations Involving Conflicting Data, Views and Arguments

As a major initiative for linking the nation's securities market centers which holds out the promise of an early realization of the Congressional goal of a nationwide clearing and settlement system, the NSCC application has received a thorough

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examination from the Commission and from numerous commenters.

The efficiencies and cost savings envisioned by NSCC's application have the potential for improving the efficiency of the markets in handling an expanding trading volume. Also, they establish a setting in which existing competitive and operational relationships will be significantly altered. As a consequence, the NSCC application presents a number of complex and often conflicting considerations, not the least of which is its probable effect on competition among clearing agencies and facilities managers as well as competition among securities markets and brokers and dealers.

Many commenters have presented their own data, views and arguments on the NSCC application. Perhaps reflecting differences in perspective, as well as concern about the effect of NSCC's registration on their own processing operations, the commenters have differed sharply in expressing views on the application. It has, accordingly, been necessary for the Commission to devote substantial effort, both in its own time and in that of its staff, to identify, categorize and resolve the issues presented. In that endeavor, the Commission has reviewed all the data, views and arguments presented and has formed its judgments in the light of its regulatory experience and the Acts objectives.

Throughout its consideration of NSCC's application, the Commission has recognized that, in an area as dynamic and complex as securities processing, there may not be any permanent resolution of the problems which the NSCC application addresses and the issues which it raises. As the Commission indicated once before,

[A]s conditions change, existing problems may be superseded by new problems, and existing "solutions" may be rendered obsolete . . . But the very purpose and nature of administrative agencies demands that current industry problems be faced and dealt with as expeditiously as possible and that the administrative authority not abdicate its clearly-defined obligation to act.¹¹²

In discussing the issues raised, the Commission has undertaken to present its own analysis of the problems involved and the reasons for, and the intended effects of, the conditions imposed on NSCC's registration. Of necessity, the Commission has limited detailed recitation of the voluminous data, views and arguments presented by commenters, in order to attempt a clear presentation in this order of the bases on which the Commission has made its determinations as well as the reasons supporting those determinations.

Capacity to Reduce Unnecessary Costs From the financial difficulties which beset brokers and dealers during the paper-work crisis and from the Congressional concern that a national clearing and settlement system take advantage of available economies, the Commission has concluded that both the national system and its components, such as NSCC,

should have the capability to reduce unnecessary costs and, to the extent possible, to take advantage of savings which may be achieved through the combination of compatible operations and the discontinuation of unnecessary operations.

The cost information submitted by NSCC during the proceedings tended to show that, depending on the volume of transactions processed, the combined systems operations planned for Phase II would generate annual industry cost reductions of \$12.4 to \$17.4 million, comprising reductions of \$10.0 to \$13.3 million in the costs incurred by present participants in relating to ASECC, NCC and SCC, and annual reductions of \$2.4 to \$4.1 million in the current costs of operating the three clearing corporations.¹¹³ At the request of the Commission's staff, NSCC prepared estimates comparing the cost of Phase II operations ("Model I") with the cost of the most likely possible alternative to NSCC's establishment—operation of ASECC-SCC and NCC as two interfaced and competing systems ("Model II").¹¹⁴ That comparison showed that, depending on volume, the annual cost of clearing corporation operations under Model II would be \$7.2 million to \$9.4 million higher than under Model I.¹¹⁵

Portions of the data submitted by NSCC were questioned by commenters and NSCC's data were analyzed by the Commission. As a result of its analysis, the Commission concluded that, while the cost reductions estimated for Model I appeared to be reasonable, the estimates comparing the costs of Model I and Model II overstated the estimated annual costs of Model II by approximately \$1 million and consequently overstated by a like amount the excess of Model II annual costs over those of Model I.¹¹⁶ Notwithstanding that conclusion, the Commission is persuaded that NSCC's Phase II operations would generate annual reductions in current clearing corporation operating costs and, allowing for the revised estimate, would have a lower operating cost than Model II operations. Even though annual clearing corporation cost reductions (from \$2.4 to 4.1 million) would represent between 13 and 18 percent of combined current ASECC, NCC and SCC operating costs¹¹⁷ the Commission has not accorded substantial weight to those reductions in granting NSCC's registration because of the Commission's belief that most, although not necessarily all,¹¹⁸ of the more significant \$10.0 to \$13.3 million participant cost savings could be achieved in either a Model I or a Model II environment.

Capacity to Achieve the Linking of Clearing and Settlement Systems and Facilitate the Establishment of a National System The Commission has determined that the existing operations of ASECC, NCC and SCC, which will be NSCC's operations during Phase I, and the planned operations of NSCC following implementation of Phase II, as modified by the conditions to this order, have the capacity to achieve the important statutory objectives of linking clearing and settlement systems, fostering cooperation and coordination among persons engaged in the clearance and settlement of securities transactions and facilitating the establishment of a national system for the clearance and settlement of transactions

in securities. The Commission's determinations that NSCC has the capacity to make these substantial contributions to the establishment of a national system are based on uncontroverted data, views and arguments submitted by NSCC, written views and arguments of brokers and dealers located both in and outside of New York City and the Commission's belief that the conditions imposed by this order will counter the negative consequences which might otherwise result from NSCC's establishment.¹¹⁹

A number of registered clearing agencies located outside New York City expressed concern that NSCC would discourage, rather than use its capacity to achieve, links between clearing and settlement systems and the establishment of a national system by engaging in delaying tactics, failing to cooperate with other registered clearing agencies and establishing prohibitive interface fees.¹²⁰

The first condition to which the Commission is subjecting NSCC's registration responds to those concerns by requiring NSCC to offer to establish full interfaces¹²¹ with continuous netting systems and appropriate links with certain other clearing and settlement operations, without interface charges, before it may initiate Phase II operations (the "Free Interface Condition").¹²² In addition, during Phase I, NSCC may not make any changes in the existing rules, operating procedures or facilities management agreements of NSCC or any of its operating divisions without prior Commission approval. As a result of the Free Interface Condition, NSCC will not be able to offer services other than those offered presently by its operating divisions until each of the clearing corporations which must establish links with NSCC in order to provide the accounting and settlement component of one account processing¹²³ has, in the judgment of the Commission, completed or had an adequate opportunity to complete arrangements with NSCC necessary to enable it to provide services comparable to those which NSCC intends to provide.

Also the Commission is directing NSCC to establish coordinating groups to identify and resolve any matters which are delaying completion of linking. Moreover, if there are delays in achieving the implementation of Phase II operations, the Commission would consider taking steps to suspend or revoke NSCC's registration and to explore other approaches to facilitating the prompt establishment of a national clearing and settlement system.

Assuming satisfaction of the conditions imposed in connection with NSCC's registration, the Commission believes that NSCC will further the linking of clearing systems and the establishment of a national system, in particular, through the expansion of the ASECC-SCC Regional Interface Operation ("RIO") developed by SIAC. NSCC will have in place by the start of Phase II clearing interfaces for OTC and listed transactions with each of MCC, PCC and SCCP and appropriate links with BSECC and TADDC. By providing interfaces without interface charges,¹²⁴ the initiation of Phase II integrated operations will facilitate the establishment of a national clearing and settlement system of interfaced entities in which

brokers and dealers will be able to choose the marketplace for a transaction on the basis of the best price obtainable and brokers and dealers, banks and other financial institutions¹²⁵ will be able to process the transaction through the clearing corporation of their choice.¹²⁶

NCC's operation includes in its book entry system approximately 10,300 issues, including issues listed on exchanges and issues traded only OTC. The ASECC and SCC book entry systems do not include issues which are not listed on an exchange. At present, NCC clears only OTC transactions and, although through existing interfaces ASECC and SCC clear some transactions in issues listed on exchanges other than the Amex and NYSE, essentially, ASECC clears only transactions in Amex-listed issues and SCC clears only transactions in NYSE-listed issues. As a result, brokers and dealers with Amex, NYSE and OTC transactions to clear and settle must currently participate in all three entities, either directly or through a correspondent. If the multiple clearing corporation participation is direct, after January 2, 1977, the broker or dealer may be required to deliver securities of the same issue to, or receive them from, more than one clearing corporation on a given settlement day and, in some cases, may have to make multiple securities settlements which would be offsetting (and therefore would not have required separate settlements) if they had been made with or through a single clearing corporation.¹²⁷ Also, as a result of multiple clearing corporation membership, a broker or dealer could be required to make multiple daily money settlements which would offset each other if they could be made through one clearing corporation.¹²⁸ The Commission believes the Act calls for a national system which provides one daily securities settlement per issue and one daily money settlement.¹²⁹

Under the Phase II operations, NSCC would include in its book entry system all issues currently included in the ASECC, NCC and SCC book entry systems and would clear all transactions currently cleared by ASECC, NCC and SCC.¹³⁰ Accordingly, through NSCC, former ASECC, NCC and SCC participants would have one daily settling position each issue cleared and one daily money settlement.

Neither ASECC, nor NCC, nor SCC provides its participants with the ability to compare through the clearing corporation transactions other than those effected in the marketplaces in which the clearing corporation performs the comparison function. Consequently, participants in ASECC, NCC and SCC currently must maintain an ability to perform a separate daily comparison with each of the three clearing corporations. In a national system, a participant should be able to compare all its transactions through a single clearing and settlement entity.¹³¹

Beginning with Phase II of NSCC's plan, NSCC participants located in New York City would be able to effect transaction comparison through NSCC for Amex, NYSE and OTC transactions. The second condition to NSCC's registration ("Remote Comparison Condition") requires NSCC, by beginning of Phase II, to provide the same comparison

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capability through the NSCC branch network and, at cost, to provide facilities through which NSCC participants located outside New York City and participants in other clearing operations, wherever located, will be able to compare Amex, NYSE and OTC transactions eligible for comparison by NSCC.¹³²

The combination of accounting and settlement functions for Amex, NYSE and OTC transactions which would occur in Phase II and the availability in Phase II of comparison for Amex, NYSE and OTC transactions through NSCC would provide the NSCC participants the benefits of one account processing for the bulk of their securities transactions. The Commission believes that by providing one account processing for Amex, NYSE and OTC transactions NSCC's Phase II operations would provide the most important element of a national system.¹³³

ASECC and SCC currently operate a common envelope delivery system and NCC currently operates its own envelope delivery system. Because the two systems have different although overlapping membership, many brokers and dealers belong to both systems in order to complete deliveries to other brokers and dealers. In Phase II, NSCC would provide a single envelope settlement system servicing all existing ASECC, NCC and SCC envelope routes. Also, the ability to use a single envelope system at NSCC would permit NSCC participants to combine their daily envelope system and book entry system money settlements.¹³⁴

Because DTC does not accept many OTC issues for deposit, participants in ASECC and SCC currently are required to maintain these OTC securities either outside the book entry environment or in another depository. NCC participants may maintain virtually all listed equity issues and many OTC equity issues in NCC's depository-equivalent free position. By the beginning of Phase II, participants in NSCC will be able to maintain on deposit in a book entry environment all issues currently included in the ASECC, NCC and SCC book entry systems. Accordingly, consistent with the capabilities which the Commission believes a clearing entity participating in the national system should have, NSCC would enable its participants to deliver securities to, and receive securities from, NSCC and other participants and clearing corporations by book entry and to take advantage of the other functions which may be performed by book entry.¹³⁵

At present, participants in ASECC and SCC are able to achieve same-day turnaround of Amex and NYSE listed issues on both the clearing and depository levels. The same ability is not available in NCC and consequently is not available at all for the OTC issues which are cleared only by NCC. In Phase II, NSCC would make available same-day turnaround at the clearing and depository levels for Amex, NYSE, OTC and other listed transactions. By permitting rapid redelivery of OTC issues, Phase II operations would both alleviate delays which have arisen in the past due to the unavailability of certificate inventory for OTC issues and provide a significant component of a national system.¹³⁶

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Competitive Considerations

Effects on Competition Among Brokers and Dealers Brokers and dealers located outside major financial centers have incurred higher costs in relating to and comparing, clearing and settling transactions through clearing corporations located in those centers than brokers and dealers located in the major financial centers.¹³⁷ The difference in those costs has been particularly evident in New York City because of its importance as a financial center and because of the high cost to a broker or dealer located outside New York City of comparing, clearing and settling Amex and NYSE transactions through ASECC and SCC.¹³⁸ Through the planned expansion and upgrading of the existing NCC branch network and NSCC's proposed policy of charging the same fees for transactions compared, cleared and settled through the branch network as for transactions compared, cleared and settled in New York City ("geographic price mutualization") NSCC promises to make available to brokers and dealers located outside New York City the full range of processing operations currently available to brokers and dealers located in New York City at the same fees paid by New York City brokers and dealers.¹³⁹

A number of NSCC's potential clearing corporation competitors and the United States Department of Justice expressed the view that NSCC's activities should be restricted to New York City, either indefinitely or for a fixed period, in order to protect clearing corporations operating outside New York City from the dangers of competition with NSCC.¹⁴⁰ The Commission has concluded, for the reasons discussed under "Competition Among Clearing Agencies," that NSCC's operation of the branch network subject to the conditions contained in this order would not adversely affect competition among clearing agencies. Even if the Commission had not reached that conclusion, however, the Commission believes that the encouragement of competition among brokers and dealers is a paramount concern of the Act and represents a direct benefit for the investing public.

The effects of competition among brokers and dealers are reflected in services provided to, and commissions charged, individual and institutional customers. While the levels of those services and commissions are affected by clearing and settlement fees, they constitute a relatively small component of the services individual customers receive and the commissions individual and institutional customers pay. The levels of those services and commissions tend to be affected more significantly and more directly by competition among brokers and dealers. Accordingly, although the maintenance of competition among clearing agencies is an important statutory objective, when balanced against the facilitation of competition among brokers and dealers, clearing agency competition must give way to the public interest in maintaining the form of competition which most directly influences the levels of services received and commissions paid by individual and institutional customers.

Based on the information developed during the proceedings

and the Commission's experience in regulating clearing agencies and brokers and dealers, the Commission believes that by narrowing the difference between the clearing and settlement costs of brokers and dealers located outside New York City and the costs of brokers and dealers located in New York City, Phase II operations will significantly facilitate competition among brokers and dealers.¹⁴¹ Accordingly, the Commission has concluded that Phase II operations provide a comprehensive and practicable plan by a major segment of the securities industry for establishing a setting in which competition among brokers and dealers will be able to occur.

Effects on Competition Among Clearing Agencies During the proceedings, conflicting claims were made concerning the effect which NSCC's registration would have on competition among clearing corporations and securities depositories both during the interim between the grant of NSCC's registration and the implementation of Phase II and following implementation of Phase II.

Implicit in the views and arguments pertaining to the adverse effects of NSCC's registration during the interim was the concern that the registration's possible anticompetitive effects could not be reversed if, as a result of NSCC's failure to satisfy the conditions, its registration ceased to be effective. Concern was expressed also that NSCC would obtain a competitive advantage over other clearing corporations during the interim by offering to provide prospective NSCC participants the advantages of one account processing at the start of Phase II operations while suggesting that competing clearing corporations would be unable to offer comparable services or to offer them as soon as NSCC.¹⁴² The Commission believes that the potential for implementation of Phase II operations to achieve the objectives of the Act, including making possible the early establishment of a national system and facilitating competition among brokers and dealers,¹⁴³ outweighs any possible effects which NSCC's registration may have on competition during the interim preceding implementation of Phase II.

Currently, ASECC, NCC and SCC do not compete for accounting and settlement business.¹⁴⁴ The Commission recognizes that competition between ASECC-SCC and NCC for the accounting and settlement business of brokers and dealers located in New York City could occur if ASECC and SCC were to combine their operations, offer clearance and settlement for OTC transactions and establish a full interface with NCC. If ASECC-SCC were to establish a branch network comparable to NCC's, ASECC-SCC and NCC presumably would compete for the business of brokers and dealers located outside New York City.

The substantial overlaps between the ASECC-SCC and NCC memberships,¹⁴⁵ coupled with the NASD's belief that NCC could not compete successfully with ASECC-SCC,¹⁴⁶ suggest that, regardless of the theoretical possibility of competition between ASECC-SCC and NCC, NCC might choose not to compete. Assuming competition would occur, however, it would merely be delayed during the interim preceding imple-

mentation of Phase II while ASECC, NCC and SCC devise a definitive plan to combine their systems. During that interim, the Commission will monitor the impact of NSCC's registration on brokers and dealers and clearing agencies and, pursuant to the conditions to NSCC's registration contained in this order, will review each step NSCC takes toward implementing Phase II. If Phase II does not come to pass as planned, the Commission will consider revoking NSCC's registration. Undoing the limited combination which would be effected during Phase I by NSCC's registration would not be without difficulty, and would delay briefly the realization of any potential which exists for competition between ASECC-SCC and NCC. However, the requirement that Phase II operations not be initiated until the conditions are satisfied is intended to insure that no irreversible steps are taken before the installation of mechanisms which the Commission believes will prevent Phase II operations from imposing unnecessary or inappropriate burdens on competition. And the Commission's monitoring will ensure that exploration of possible alternatives such as competition between ASECC-SCC and NCC will not be delayed unduly by an inappropriate prolongation of Phase I.

The conditions to NSCC's registration contained in this order are intended to ensure, among other things, that NSCC will not prevent competing clearing corporations which must interact and cooperate with it from providing, contemporaneously with NSCC, services similar to those it will provide in Phase II. Even if the conditions themselves prove to be deficient in deterring NSCC from engaging in delaying tactics, the monitoring which the Commission intends to carry out,¹⁴⁷ coupled with its broad authority under the Act, should ensure NSCC's compliance with the spirit of the 1975 Amendments. In view of the conditions contained in this order and the Commission's expressed intention to exercise its authority under the Act to ensure that NSCC does not make inappropriate use of its pivotal position, the Commission does not believe that, during the interim before implementation of Phase II, competing clearing corporations will be disadvantaged in their efforts to market the kinds of services which NSCC intends to provide in Phase II.

NSCC and supporters of its application maintained that if ASECC and SCC, using SIAC, and NCC, using BNCC or another processor, were permitted to clear and settle all securities transactions and compete with each other, the current eight-to-one clearing volume advantage which ASECC and SCC have over NCC would drive NCC out of business.¹⁴⁸ In view of the supposed impossibility of effective competition between ASECC-SCC and NCC, NSCC and its supporters argued that establishment of NSCC would have no effect on potential competition between a combined ASECC-SCC operation and NCC.¹⁴⁹ Other clearing corporations and opponents of NSCC's application maintained that NCC could compete successfully with ASECC-SCC and that, therefore, NSCC's establishment would eliminate the possibility of competition among clearing corporations in New York City.¹⁵⁰

While there are serious questions whether successful compe-

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tion between ASECC-SCC and NCC would be possible and strong indications that it could occur only if NCC's competitive posture were bolstered by the imposition of restrictions delaying or prohibiting ASECC-SCC from offering one account processing and offering its services outside New York City.¹⁵¹ The Commission does not have a sufficient factual basis to conclude that NCC could not compete. Accordingly, the Commission has not assumed that NCC would be unable to survive in competition with ASECC-SCC and has recognized that approval of NSCC's application forecloses the potential for that competition. Having weighed the probable effects of that foreclosure against the benefits NSCC will provide through fostering competition among brokers and dealers,¹⁵² providing cost savings¹⁵³ and facilitating the establishment of a national system with the capabilities envisioned by the 1975 Amendments,¹⁵⁴ the Commission has concluded that it is essential, in this instance, for the potential competition between ASECC-SCC and NCC to be subordinated to the Act's other objectives.

The Commission believes that a combination of the ASECC, NCC and SCC clearing volume and the NCC branch network is necessary to make available to brokers and dealers located outside New York City, at the earliest possible date, the processing advantages which NSCC will provide in Phase II. The revenues generated by NSCC's New York City clearing volume coupled with NSCC's intention to pursue a policy of geographic price mutualization,¹⁵⁵ are likely to make possible the maintenance of an extensive branch network through which brokers and dealers located outside New York City will enjoy the efficiencies and economies of one-account processing,¹⁵⁶ book entry movement,¹⁵⁷ same-day turnaround¹⁵⁸ and lower per unit clearing fees.¹⁵⁹ As discussed previously,¹⁶⁰ the Commission believes that the availability of those processing advantages will foster competition among brokers and dealers.

Also, the existence of ASECC-SCC and NCC as separate entities would delay the attainment of important objectives of the Act by (i) creating unnecessary costs from the operation in New York City of two clearing systems with duplicate facilities and administrative overhead, (ii) impeding the linking of clearing systems by requiring other clearing agencies to establish interfaces with two clearing systems, rather than one, and (iii) complicating reconciliation procedures and creating additional costs by requiring the establishment and operation of a high-volume comparison and clearing interface between ASECC-SCC and NCC.¹⁶¹

A number of clearing corporations and other commenters argued that NSCC's policy of geographic price mutualization would adversely affect their competitive posture. They maintained that, coupled with the revenues NSCC would derive from its large New York City-based clearing volume, NSCC's operation of the NCC branch network pursuant to a policy of geographic price mutualization would enable NSCC to offer its services through the network at prices below the cost of providing those services and, possible, below the lowest prices in competing clearing corporations could offer.¹⁶²

Those clearing corporations and the United States Department of Justice and others included suggestions that NSCC's registration be conditioned on restriction of NSCC's operation to New York City either indefinitely or for some fixed period following the grant of NSCC's registration.¹⁶³ This argument assumes that NSCC's large processing volume, coupled with geographic price mutualization, will enable NSCC to offer clearing services through the branch network at prices competing clearing corporations will be unable to meet.

NSCC and supporters of its application maintained that NSCC should be free to pursue a policy of geographic price mutualization in order to enable NSCC participants located outside New York City to obtain NSCC's services on the same basis as participants located in New York City and to benefit from any lower unit costs which NSCC's volume will provide.¹⁶⁴ They maintain also that through geographic price mutualization NSCC will be able to facilitate the establishment of a national system by maintaining a more extensive branch network than would be possible under a non-mutualized pricing policy. As discussed previously, preclusion of NSCC from operating a branch network would deny these benefits to brokers and dealers located outside New York City and would perpetuate the current disadvantages which brokers and dealers located outside New York City experience through incurring higher clearing and settlement costs than brokers and dealers whose operations are located in New York City.

The Commission believes that, by permitting competing clearing corporations to participate in the NSCC branch network by paying a proportionate share of the branches' operating overhead,¹⁶⁵ the third condition (the "Common Branch Facility Condition") to NSCC's registration will enable other clearing corporations to compete with NSCC in offering services to brokers and dealers located outside New York City.¹⁶⁶ Participation in branch facilities maintained by NSCC presumably would enable a competing clearing corporation to do business in locations at which its own clearing volume would not justify the maintenance of a separate branch facility. At the same time, NSCC's operation of the network would ensure that brokers and dealers located outside New York City for whose business other clearing corporations might not attempt to compete would receive the benefits which participation in NSCC will provide. Restricting NSCC's activities could deprive brokers and dealers located outside New York City of the benefits of Phase II operations and, by, in effect, geographically allocating clearing and settlement territories, would deprive brokers and dealers of the benefits of dealing with competing clearing corporations. The Commission believes, therefore, that restriction of NSCC's operations to New York City would eliminate one of the most important benefits promised by NSCC's Phase II operations, would be inconsistent with the establishment of a national system and would retard the development of competition among brokers and dealers and clearing agencies.

Several clearing corporations argued that NSCC could obtain a competitive advantage by charging interface fees, or fees

which act as interface fees, designed to encourage brokers and dealers located outside New York City to use the NSCC network rather than another clearing corporation.¹⁶⁷ If not restricted, they maintained, NSCC theoretically could induce a broker or dealer located outside New York City with large transaction volumes on the Amex or the NYSE to use NSCC's branch network by forcing a choice between (i) moving Amex and NYSE transactions compared by NSCC to competing clearing corporations through interfaces and paying an interface charge or (ii) clearing and settling the transactions through the branch network without an interface charge. They believe a broker or dealer confronted with that choice would perceive any interface charge imposed by NSCC as an additional cost of clearing Amex and NYSE transactions through a competing clearing corporation. Accordingly, depending on the level of the interface fee, the competing clearing corporation's other costs and the geographically mutualized price of NSCC's services through its branch network, NSCC's interface charges could raise the cost of using another clearing corporation to clear and settle Amex and NYSE transactions to a level at which NSCC's branch network, or a correspondent relationship, would be the only realistic alternatives for brokers and dealers with substantial Amex and NYSE volume.

The Free Interface Condition to NSCC's registration is intended to meet this concern. By requiring NSCC to offer to establish interfaces with competing clearing corporations under which neither they nor NSCC can charge an interface fee, the Free Interface Condition would enable competing clearing corporations to restrict NSCC from using interface fees to obtain a competitive advantage.¹⁶⁸ Moreover, through its review of the fees of registered clearing corporations pursuant to Rule 19b-4 under the Act, 17 CFR 240.19b-4, and the program the Commission will implement to monitor the effect of NSCC's establishment,¹⁶⁹ the Commission believes it will be able to identify and evaluate the effects of NSCC's pricing policies on competition among clearing agencies and brokers and dealers. If, as a result of its monitoring and evaluation, the Commission determines that, notwithstanding the conditions imposed on NSCC's registration, NSCC's pricing policies are having unanticipated or inappropriate effects, the Commission will be able at that time to use its authority under the Act, including the authority to rescind or modify this order for non-compliance with its conditions, to take whatever remedial measures may be appropriate to carry out its objectives.¹⁷⁰

As a result of its analysis of NSCC's application, the Commission was concerned that, if registered without conditions, NSCC would discourage brokers and dealers located outside New York City from using other clearing corporations by denying brokers and dealers the ability, as a practical matter, to effect comparison of Amex and NYSE transactions other than through the NSCC branch network, an NSCC equivalent of SCC's direct clearing or a correspondent broker or dealer participating in NSCC.¹⁷¹ The Remote Comparison Condition attempts to obviate this concern by requiring NSCC to provide, at cost, efficient facilities through which a broker or dealer can, either directly or through an agent, including a

registered clearing corporation, compare Amex, NYSE and OTC transactions eligible for comparison at NSCC.¹⁷²

The Free Interface Condition and the Remote Comparison Condition are intended also to play a critical role in undoing operational relationships which in the past have impeded competition among brokers and dealers and clearing corporations. Currently, brokers and dealers are unable to compare Amex and NYSE transactions other than by participating in ASECC and SCC through an office maintained in New York City or through SCC's direct clearing service or by using a correspondent broker or dealer. Compared transactions can be transmitted to other clearing corporations for accounting and settlement, but ASECC and SCC charge the same fee for comparing a transaction and transmitting it through an interface as for comparing a transaction and accounting for and settling it in ASECC or SCC. Consequently, a broker or dealer which transmits an Amex or NYSE transaction through an interface pays both the standard comparison, accounting and settlement charge which would be payable for a transaction retained by ASECC and SCC and the accounting and settlement charge of the clearing corporation to which the transaction is transmitted. Together, the costs of maintaining an office in New York City or making other arrangements necessary to effect comparison and the added cost of an interface fee make it virtually impossible for a broker or dealer located outside New York City which does a substantial Amex and NYSE business to avoid either belonging to ASECC and SCC (and using SCC's direct clearing service or maintaining an office in New York City) or using a correspondent broker or dealer for comparing, clearing and settling Amex and NYSE transactions.

The combined effect of existing Amex, ASECC, NYSE and SCC rules, procedures and restrictive operational links, which are not unique to those entities, has been to impede competition between brokers and dealers located outside major financial centers and brokers and dealers located in those centers and virtually to preclude competition between clearing corporations for the business of clearing and settling transactions compared by other clearing corporations. Those effects have been particularly pronounced in the case of transactions executed on the Amex and the NYSE, the two securities markets with the highest trading volume. In conjunction with the Commission's ongoing review of the rules of clearing agencies¹⁷³ and securities markets in connection with the Commission's implementation of the 1975 Amendments,¹⁷⁴ including the rules of NSCC and the Amex, NYSE and NASD, imposition of the Free Interface and Remote Comparison Conditions will sever the restrictive operational links which in the past have impeded competition among registered clearing agencies and among brokers and dealers and will enable brokers and dealers to effect one account processing, including processing of Amex and NYSE transactions, through another clearing corporation, a correspondent broker or dealer or the NSCC branch network.

The fourth condition to NSCC's registration (the "OTC Comparison Condition") requires NSCC to make its computer

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programs for the performance of OTC comparison available upon request to any registered clearing agency prior to the start of Phase II operations in order to perform comparison of OTC transactions between its participants.¹⁷⁵ The OTC Comparison Condition provides also that comparison of all OTC transactions between participants in two different clearing agencies will be performed by a single clearing agency free of charge to other clearing agencies.¹⁷⁶

The Commission believes that the effect of NSCC's registration on competition among securities depositories will be similar to its effect on competition among clearing corporations.

Securities depositories provide services related integrally to clearing corporation operations and custodial and book entry delivery services used by banks and other financial institutions which do not participate in clearing corporations. Accordingly, the effect of NSCC's registration on securities depositories is limited to those depository services, such as the ability to effect securities settlements with clearing corporations by automatic book entry movement, which enable or facilitate participation in the clearing corporations. Currently, both MSTC and PSDTC are linked integrally to the clearing operations of MCC and PCC in much the same way as DTC will be linked to NSCC, and SSCP's depository and NESDTC currently are operationally dependent on SSCP and BSECC. To the extent that the relationship of those depositories and clearing corporations would affect the depositories' competitive posture, the Commission believes that the depositories would experience the same effects from NSCC's registration as their related clearing corporations, which the Commission believes will be able to compete with each other and with NSCC more effectively than they have competed with ASECC and SCC in the past. Also, the Free Interface Condition is designed to preserve TADCC's competitive position and the processing efficiencies provided by its existing relationship with NCC.

In response to expressions of concern that NSCC's registration would have adverse effects on competition among clearing agencies and in order to address concerns identified through the Commission's analysis of NSCC's application and facilitate the establishment of a national system, the Commission has imposed four conditions on NSCC's registration. The Commission believes that those conditions, which have been modified in the light of responses to the Commission's request for comments, will provide a setting in which clearing agencies will be able to compete across the country in offering one account processing to brokers and dealers.

Effects on Competition Among Transfer Agents During the proceedings the Commission received no data, views or arguments concerning the effect of NSCC's registration on the maintenance of competition among transfer agents. Based on its experience in registering and regulating transfer agents and on the absence of comment by transfer agents during the proceedings, the Commission believes that NSCC's registration will have no effect on competition among

transfer agents.

Effects on Competition Among Securities Exchanges During these proceedings, several regional securities exchanges stated that, while they were becoming increasingly independent of their clearing corporation subsidiaries, historically regional securities exchanges had shared facilities with their subsidiary clearing corporations and had relied on them for revenues and the provision of specialized services to exchange members.¹⁷⁷ The representatives of three securities exchanges expressed concern that NSCC's establishment might have an adverse impact on regional exchanges by impairing the viability of their subsidiary clearing corporations.¹⁷⁸ The representatives of two of those exchanges advised the Commission that their viability was dependent on the viability of their subsidiary clearing corporations.¹⁷⁹ In granting NSCC's registration, the Commission has imposed conditions which it believes will remove constraints which in the past have disadvantaged clearing agencies located outside New York City in their efforts to account for and settle Amex and NYSE transactions and have prevented those clearing agencies from competing effectively with ASECC and SCC. Accordingly, the Commission does not believe that NSCC's establishment will threaten the viability of other clearing corporations or, through them, adversely affect the competitive posture of their affiliated securities exchanges. Nevertheless, the Commission will monitor the effect of NSCC's establishment on clearing agencies, and, in connection with its responsibilities under the Act, will continue its current monitoring of the competitive posture of securities exchanges.

Payments to the Amex, NASD and NYSE A number of commenters maintained that the \$0.12 fee, which NSCC participants would pay and which NSCC, in turn, would pay to the Amex, NASD and NYSE to help defray their self-regulatory costs is inappropriate.¹⁸⁰ NSCC and the three self-regulators maintained that imposition of the \$0.12 fee was a method of replacing a revenue stream which the self-regulators would forego as a result of transferring the clearing agency operations of their wholly-owned subsidiaries to the NSCC. The three self-regulators added that the fee is intended to provide those revenues until alternative revenue sources are developed or until diminished regulatory responsibilities reduce the need for the revenues.¹⁸¹

During the past ten years, the NYSE derived from SCC approximately the same annual revenue which the \$0.12 fee would generate. It used those revenues, together with the other revenues it received, to defray the costs of its self-regulatory program.¹⁸² During the same period, the Amex received virtually no payments from ASECC.¹⁸³ The NASD did not receive payments from NCC until October 1, 1975, when NCC began paying the NASD a fee of \$0.12 per side for transactions processed by NCC.¹⁸⁴ The Amex, NASD and NYSE represented¹⁸⁵ (and financial data periodically filed with the Commission by the self-regulators confirms)¹⁸⁶ that the cost of their self-regulatory activities substantially exceeds the revenue which the \$0.12 fee will generate and that all

their revenues are used in carrying out self-regulatory functions.

Brokers and dealers effecting OTC transactions can avoid the charge by comparing the transactions at another clearing corporation and clearing and settling the transactions either there or through NSCC. Brokers and dealers effecting Amex and NYSE transactions are unable to avoid the \$0.12 fee since those transactions are compared by NSCC, and representatives of the Amex and the NYSE maintained that were the fee not charged through NSCC it would be imposed as an exchange transaction fee or a comparison fee and would have to be paid by brokers and dealers effecting transactions on the Amex and the NYSE, regardless of the clearing corporation through which the transactions were cleared and settled.

Pursuant to Section 17(d)(1) of the Act, the Commission is exploring with the national securities exchanges and the NASD alternative approaches to the allocation of self-regulatory responsibilities among the existing self-regulatory organizations.¹⁸⁷ Pending the resolution of the issues currently under consideration, the Commission believes it is not inappropriate for the Amex, NASD and NYSE to continue their existing revenue arrangements, including the \$0.12 fee to be collected through NSCC.

The Commission will monitor the effect of the \$0.12 fee on brokers and dealers, clearing agencies and securities exchanges and, in addition to its continuing authority under the Act, reserves the right to review the appropriateness of the fee in general or with respect to any of the Amex, NASD and NYSE. In determining whether NSCC's collection, and the self-regulators' receipt, of the \$0.12 fee continues to be appropriate, the Commission will consider the results of its monitoring and any new allocations of self-regulatory responsibilities effected pursuant to Section 17(d)(1) of the Act. The Commission's consideration may include the appropriateness of the fee in light of the obligations and costs related to NSCC's establishment and performance of clearing and settlement functions and in light of the regulatory and other responsibilities of the three self-regulators, the contribution their regulation makes to NSCC's operation and the alternative sources of revenue available to support that regulation. Depending on its conclusion, the Commission may determine to use its authority under the Act to make such modifications in the fee arrangements as appear to be necessary or appropriate in furtherance of the purposes of the Act.

The NSCC-SIAC Facilities Management Agreement As part of the restructuring of the corporate arrangements through which the Amex, NASD and NYSE have provided their members clearing and settlement services, the NSCC application provides that the clerical and processing functions underlying those services are to be combined in SIAC and provided to NSCC at cost. During Phase I, NSCC, as assignee of NCC's rights under its facilities management agreement with BNCC, will exercise NCC's right to terminate BNCC's services by paying BNCC the early termination

penalty contemplated by the agreement. Thereafter, pursuant to the Management Agreement, SIAC will begin performing the processing functions currently performed for NCC by BNCC and will continue performing the processing functions SIAC currently performs for ASECC and SCC.

The five-year Management Agreement included in NSCC's application was amended several times during these proceedings. The amendments, among other things, added a clause acknowledging the parties' right to terminate the Agreement upon breach, added buy-out provisions under which NSCC may replace SIAC as facilities manager and expanded NSCC's right to monitor SIAC's performance of NSCC clearing and settlement operations and the cost allocations made by SIAC in determining its charges to NSCC.

Under the buy-out provisions of the Management Agreement, NSCC may replace SIAC after the second year upon NSCC's assumption of a decreasing portion of the liabilities with which SIAC would be left as a result of the termination. The liabilities which NSCC would have to assume are less than the \$14.7 million in liabilities which SIAC and its parent corporation (the Amex and the NYSE) and its affiliates (SCC and ASECC) estimate they have incurred in providing clearing and settlement services to the Amex and NYSE membership and which they would have to absorb in the absence of offsetting clearing revenues. After the second year of the Agreement, NSCC would have to assume liabilities of \$8.1 million, after the third year \$5.4 million, and after the fourth year \$2.7 million.¹⁸⁸ At the expiration of the Management Agreement, NSCC would have no further obligations to SIAC and SIAC would be left with approximately \$7.7 million of lease obligations for space used for clearing and settlement operations.

To provide facilities for the clearing and settlement of the members' exchange transactions, the Amex and NYSE have the corporations in which the clearing functions were housed—ASECC, SCC and SIAC—enter into space and equipment leases, hire personnel, develop clearing and settlement systems and program computers to operate as part of the systems. In so doing, the Amex and the NYSE directly and through or on behalf of their subsidiaries, incur liabilities attributable solely to clearing and settlement operations and liabilities attributable to space, equipment and personnel used for both clearing and settlement and other exchange-related operations. The decision that SIAC act as NSCC's facilities manager resulted from negotiations among the Amex, the NASD and the NYSE concerning the terms under which each self-regulator would relinquish control over its clearing and settlement operations and transform them and their related assets and revenues to a single clearing operation which would be controlled by its users rather than by the self-regulators. In those negotiations the self-regulators agreed that for the first five years of NSCC's operations SIAC would act as facilities manager and charge NSCC, and indirectly its participants, SIAC's cost of providing NSCC clearing and settlement services.

During the proceedings opponents of NSCC's registration and the United States Department of Justice maintained that the Management Agreement was anticompetitive and recommended that any grant of registration to NSCC be conditioned on exposure of NSCC's facilities management contract to competitive bidding.¹⁸⁹ NSCC, the Amex, NASD, NYSE and supporters of NSCC's registration maintained that the decision to retain SIAC as NSCC's processor is an appropriate exercise of business judgment made in connection with a realignment of their clearing and settlement operations and is intended to match clearing-related liabilities with the revenues necessary to offset them.¹⁹⁰ They maintained also that NSCC's retention of SIAC would avoid possible disruptions entailed in transferring existing ASECC and SCC clearing operations to a new processor and would take maximum advantage of the planning and other work performed by SIAC in connection with the submission of NSCC's application.¹⁹¹

The Commission has not been persuaded that NSCC should be required to expose its facilities management contract to competitive bidding. The Act does not compel registered clearing agencies to submit such agreements to competitive bidding and the circumstances of the decision for NSCC to retain SIAC do not appear to require the Commission to substitute its business judgment for that of the NSCC board of directors. When, as in this case, the Commission has no cause to believe that the processor will be unable to provide the safeguards and efficiencies required by the Act, a clearing agency's decision to terminate the services of a processor and retain another processor, act as its own processor or use a subsidiary or affiliated entity as its processor, is an appropriate exercise of business judgment, with or without resort to competitive bidding.¹⁹²

In its application NSCC indicated that it would exercise NCC's rights under the five-year NCC-BNCC facilities management agreement to terminate BNCC by paying the early termination penalty applicable to a termination during the agreement's third year.¹⁹³ NSCC's termination of BNCC pursuant to the NCC-BNCC agreement is not central to the broad regulatory decisions which the Commission is making today. Moreover, the Commission does not believe that BNCC's termination requires the Commission to treat NSCC's judgment to retain SIAC without competitive bidding differently from other business judgments by engaging in the questionable exercise of revisiting a determination involving complex operational and financial matters.

In view of the flexibility NSCC will have under the Management Agreement, the continuity provided by SIAC's retention and the importance of NSCC's retention of SIAC to the accords which have made possible the initiative represented by NSCC's establishment, NSCC's failure to resort to competitive bidding does not, in the Commission's opinion, warrant disapproval of NSCC's application or imposition of the substantial delay in achieving the advantages of Phase II operations which would be entailed in resorting to competitive bidding at this time.

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Alternative Approaches Considered

In order to determine whether there were any alternatives to the registration of NSCC which arguably had less anticompetitive impact and an equal potential for achieving the Act's objectives, the Commission evaluated three theoretical alternatives, each of which presupposed denial of NSCC's registration and the Commission's adoption of rules which would require all registered clearing agencies, including NSCC to provide the levels of service necessary for the establishment of a national system.¹⁹⁴ The three alternatives were: (i) competition among fully interfaced entities, including NCC; (ii) merger of NCC with a clearing agency other than ASECC or SCC; and (iii) NCC's discontinuation of clearing and settlement operations and retention of OTC comparison operations.¹⁹⁵ Each of the alternatives was compared with the plan outlined in NSCC's application to determine relative implementation times, operating costs, ability to facilitate the establishment of a national system and effects on competition among brokers and dealers.

The following assumptions were made regarding the impact of the alternatives on competition: (i) operation of NCC as a fully-competitive entity was assumed to be possible and to have less of an adverse impact on competition among clearing agencies in New York City than NSCC's establishment; (ii) merger of NCC with a clearing agency other than ASECC or SCC was assumed to be financially and operationally feasible and to result in less concentration of clearing and settlement volume in one entity than NSCC's establishment; and (iii) NCC's discontinuation of clearing and settlement activities was assumed to be financially and operationally feasible and to result in the same dispersion of NCC's discontinued clearing and settlement volume among other clearing agencies as NSCC's establishment while withholding from NSCC the ability to perform comparison for OTC transactions.

Because NSCC's establishment would require fewer comparison and clearing interfaces than any alternative, except NCC's merger with another clearing agency, would entail less disruption of existing clearing and settlement arrangements than any alternative except operation of NCC as a fully competitive entity and already has been the subject of a year's planning and development, the Commission believes NSCC's plans could be implemented significantly sooner than any of the alternatives. Comparison of the alternatives' theoretical operating costs suggested that, except for NCC's merger with another registered clearing agency, which arguable could provide the same operating cost savings as NSCC's establishment, none of the alternatives would reduce administrative overhead or duplicative facilities, and consequently operating costs, as much as NSCC's establishment.¹⁹⁶

Because none of the alternatives would have NSCC's potential for maintaining and expanding the NCC branch network and the services available through that network,¹⁹⁷ no alternative would foster competition between brokers and dealers

located in New York City and brokers and dealers located outside New York City to the same extent as NSCC's establishment and no alternative would be likely to provide an extensive branch network through which the business of brokers and dealers located outside major financial centers could become the object of competition among a number of registered clearing agencies. As a result of its comparative analysis, the Commission concluded that none of the alternatives could be implemented as soon as NSCC's Phase II operations, only the merger of NCC with another clearing agency would have the potential of providing the same operating cost savings as Phase II operations and none of the alternatives would permit increased competition among brokers and dealers to the same extent as NSCC's Phase II operations.

In the absence of evidence that would warrant predicated regulatory action on the assumption that clearing and settlement is a natural monopoly,¹⁹⁸ the Commission did not explore in depth alternatives to NSCC's registration requiring allocation of territories or issues among NSCC and other registered clearing agencies or other kinds of restraints fundamentally affecting free competition among clearing agencies. Based on its experience in regulating securities markets, clearing agencies, brokers and dealers, transfer agents and securities information processors and the knowledge of the dynamics of competition among securities markets and clearing agencies acquired in the course of efforts to structure a national market system and an accompanying national clearing and settlement system, the Commission has concluded that the benefits and economic discipline of competition can be attained in the clearing and settlement area. Accordingly, rather than adopting approaches appropriate to a natural monopoly, the Commission has sought to free the competitive potential present in the clearing and settlement area by imposing conditions on NSCC's registration designed to sever existing restrictive ties between clearing agencies and their affiliated securities markets.¹⁹⁹

The legislative history of the 1975 Amendments stresses the need for the Commission to facilitate the establishment of a national clearing and settlement system at the earliest possible date.²⁰⁰ For this mandate to be carried out and a national clearing and settlement system to be in place in time to receive the transactions of a national market system, initiatives which moved toward national solutions to processing problems and which accord with the purposes of the Act must be encouraged and carried forward. If the Commission is to discharge in a timely manner its statutory obligations to foster national market and clearing systems, it must in large measure base its decisions in those highly technical and complex areas on concrete proposals submitted to it such as NSCC's application for registration. Recognizing the urgency of its task, the Commission has reviewed, analyzed and evaluated NSCC's application for registration and has considered the three alternatives described previously. The Commission has not considered other possible alternatives which, in the absence of definitive plans, would be at best theoretical constructs.

IMPLEMENTATION AND MONITORING

In granting NSCC's registration the Commission has reviewed and analyzed NSCC's application, evaluated NSCC's projected Phase II operations in accordance with the criteria of Section 17A(a)(1) of the Act, weighed the results of its evaluation against the concerns of Section 17A(a)(2) of the Act and made the determinations pursuant to Section 17A(b)(3) of the Act which the Commission is making at this time. The Commission believes that by contributing to the establishment of a national clearing system with the characteristics envisioned by the Act at the earliest possible date, the determination to grant NSCC's registration will be instrumental in ensuring that the development of a national market system is not delayed for want of a national clearing system. Although in light of the information available at this time the Commission believes that its decision is correct and represents the most likely avenue for reaching the Act's objectives at an early date, the Commission recognizes it is engaged in a complex and dynamic regulatory endeavor whose parameters and objectives necessarily must change in response to new technological advances and new developments in the nation's securities markets. Accordingly, the Commission intends to monitor closely the effects of the decision it is making today.

Although the Commission believes the decision made today is fully consistent with the objectives of the Act, the Commission is comforted by the realization that it may, if necessary, substantially modify or reverse that decision. Should the results of the Commission's monitoring disclose the evolution of relationships among clearing and settlement entities and participants in the clearing and settlement process which indicate the need for new or different approaches to the registration of clearing agencies, the Commission will undertake appropriate action pursuant to its authority under the Act.

In addition to the Commission's continuing jurisdiction under the Act and oversight of NSCC as a registered clearing agency,²⁰¹ the registration granted by this order is conditional and may be withdrawn if the conditions contained in this order are not satisfied or if it appears to the Commission that delays in satisfying the conditions warrant the exploration of other approaches to facilitate the prompt establishment of a national clearing and settlement system. The Commission may modify any part of the conditions prior to the initiation of Phase II operations if the Commission determines that NSCC's satisfaction of the conditions is being delayed by other persons or that such action is necessary or appropriate to carry out the purposes of the Act.

This order directs NSCC to establish coordinating groups during Phase I to facilitate the establishment and operation of interfaces and NSCC branch facilities in which one or more other clearing corporations elect to participate. The Commission believes that these groups will serve as forums in which difficulties and lapses in cooperation encountered by NSCC and other registered clearing agencies in their joint efforts to

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establish interfaces and branch facilities can be identified and either resolved or brought to the attention of, and resolved by, user boards. Before implementation of Phase II operations, the Commission will determine, on the basis of the coordinating groups performance during Phase I, whether it is necessary or appropriate to continue their existence during Phase II.

Currently, the Commission is conducting proceedings in connection with continuing the registration of 13 clearing agencies registered on December 1, 1975.²⁰² As part of those proceedings and in connection with the determinations with respect to NSCC's registration not made in this order, the Commission will consider, during the period before the implementation of Phase II and thereafter, such matters as (i) the issues which should be included in the book entry portion of a national clearing and settlement system, (ii) the appropriateness and parameters of interface fees for movements between securities depositories, (iii) the bases on which and arrangements under which registered clearing agencies should participate in other registered clearing agencies,²⁰³ (iv) the extent to and manner in which registered clearing agency operations should facilitate settlements between brokers and dealers and their institutional customers, (v) the size and nature of the clearing fund contributions and other membership requirements to which participants in registered clearing agencies should be subject in general and as participants in more than one registered clearing agency and (vi) the extent to which clearing agencies should be obligated to disclose cost and revenue data to participants and owners. At the same time, the Commission will be considering areas in which it should exercise its rulemaking authority with respect to registered clearing agencies. In the discharge of this broad range of regulatory responsibilities the Commission will seek to harmonize the Act's objective of developing a national clearing and settlement system with NSCC's initiation of Phase II operations.

While NSCC will operate in the context of the continuing oversight conducted by the Commission in discharging its regulatory responsibilities with respect to securities markets, clearing agents, brokers and dealers, transfer agents and securities information processors, the Commission will implement measures uniquely intended to isolate, identify and evaluate the effects of NSCC's establishment on each of those entities.

In addition to meetings with registered clearing agencies and their participants to determine the rate of NSCC's progress toward the implementation of Phase II and the effects of its pricing policies, the Commission plans to establish a program for the receipt of regular reports from registered clearing agencies covering such matters as (i) price and service data, (ii) aggregate clearing volume and number of participants, (iii) volume in either direction through each interface or link (detailed) as to each participant; (iv) names of participants withdrawing from registered clearing agencies, (v) the history of clearing volume generated by withdrawing participants, (vi) clearing volume generated by participants joining registered

clearing agencies during the six months before their joining and (vii) cost and revenue data for the clearance and settlement operations (detailed as to, among other things, comparison, interface and branch facility operations). The Commission will also monitor the effects and appropriateness of the \$0.12 fee imposed pursuant to the NSCC shareholders' agreement in connection with the Commission's survey of Self-Regulatory Organizations and Subsidiaries.²⁰⁴

In appropriate instances, the Commission may determine that cost data obtained from registered clearing agencies with respect to matters such as interface, comparison and branch facility operations should be furnished to other clearing agencies participating in the interfaces or branch facility operations.

DETERMINATIONS, CONDITIONS AND DIRECTIVES

NSCC having made application for registration as a clearing agency pursuant to Sections 17A(b) and 19(a)(1) of the Act and, pursuant to Rule 17Ab2-1 under the Act, having requested the Commission to exempt NSCC from one or more of the requirements as to which the Commission is directed to make determinations pursuant to subparagraphs (A)---(I) at Section 17A(b)(3) of the Act;

And the Commission having determined: that NSCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Act and the rules and regulations thereunder and to carry out the purposes of Section 17A of the Act; that the rules of NSCC do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants; that the rules of NSCC are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in NSCC's custody or control or for which it is responsible, to foster cooperation and coordination with persons engaged in clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and that the rules of NSCC do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act;

IT IS ORDERED, that NSCC's registration be and it hereby is granted, subject to the terms contained in this order and to the following conditions and directions, this 13th day of January 1977, to be effective for not more than 18 months, implementation thereof by NSCC to occur not earlier than January 20, 1977; and

FURTHER ORDERED, that NSCC may not begin operating, as an integrated system, the clearing and settlement systems currently operated by the American Stock Exchange Clearing

Corporation ("ASECC"), the National Clearing Corporation ("NCC") and Stock Clearing Corporation ("SCC") or make, without prior Commission approval, any changes in the rules, operating procedures or facilities management arrangements of NCC or any of its operating divisions in effect immediately following issuance of its order unless NSCC shall have first

(i) established full interfaces with each of the Midwest Clearing Corporation ("MCC"); Pacific Clearing Corporation ("PCC"); and Stock Clearing Corporation of Philadelphia ("SCCP") and appropriate links with Boston Stock Exchange Clearing Corporation ("BSECC") and TAD Depository Corporation ("TADDC") and offered to operate each interface and link under agreements which would provide that the parties to the interface or link would not charge each other for interface movements or charge their participants either, an interface fee or any fee which would operate as an interface fee;

(ii) provided, at cost, efficient facilities, and cooperated with brokers and dealers and other registered clearing agencies in the development of alternative means, through which brokers and dealers may compare, either directly or through an agent, transactions eligible for comparison at NSCC, and enabled its participants to effect comparison, clearance and settlement of New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex") and over-the counter ("OTC") transactions through the NSCC branch network;

(iii) begun operating existing NCC branch facilities so that those facilities, and any other branch facilities established by NSCC, provide, at a minimum, the same level of service provided through the facilities to NSCC participants to participants in any other registered clearing agency which agrees to use any of the facilities and to defray a portion of any such facility's operating costs equal to such clearing agency's proportionate use of the facility; and

(iv) furnished without charge to any registered clearing agency which requested them computer programs for the performance of trade comparison for OTC transactions between the registered clearing agency's participants and made arrangements for any other registered clearing agency which is willing to do so to compare all OTC transactions between participants in different registered clearing agencies, without charge to such registered clearing agencies, or, if no other registered clearing agency is willing to do so, undertaken to compare all such transactions without charge to registered clearing agencies; and

FURTHER ORDERED, that in order to facilitate establishment of the interfaces and links referred to in the first condition and the shared operation of branch facilities referred to in the third condition, NSCC be and it hereby is

directed to offer to constitute a coordinating group for each interface or link which NSCC establishes and each branch facility in which one or more registered clearing agencies other than NSCC elect to participate. The composition of the coordinating groups is to be as follows: in the case of an interface or link, (i) a representative of NSCC, (ii) a representative of an NSCC participant designated by NSCC that intends to use the interface or link, (iii) a representative of the other clearing agency participating in the interface or link and (iv) a representative of a participant in the other clearing agency designated by it which participant intends to use the interface or link; and, in the case of a branch facility in which one or more registered clearing agencies other than the NSCC elect to participate, (i) a representative of NSCC, (ii) a representative of an NSCC participant that uses the branch facility, (iii) a representative of each other registered clearing agency that elects to participate in the branch facility and (iv) a representative of a participant in each other registered clearing agency designated by it which participant intends to use the branch facility. During the period preceding implementation of integrated systems operations each coordinating group shall meet periodically and upon the call of two or more of its members and, not less frequently than once a month during this period, shall report to NSCC and to the other registered clearing agency or agencies represented in the group on the progress made in establishing the interface, link or branch facility and on any difficulties encountered in its establishment.

By the Commission (Chairman Hills and Commissioners Loomis, Evans and Pollack).

George A. Fitzsimmons
Secretary

¹ Pub. L. No. 94-29, § 16, 89 Stat. 146 (1975).

² Section 3(a)(23) of the Act, 15 U.S.C. 78(c)(a)(23) (1975), defines "clearing agencies" to include, *inter alia*, clearing corporations and securities depositories. See also N.Y. Uniform Commercial Code, Sections 8-102(3) and 8-320 (McKinney Supp. 1975-76). For a description of clearing corporation and depository functions, see discussion under "Characteristics of a National System" *infra*.

³ Securities Exchange Act Release No. 12274 (March 29, 1976), 41 FR 14455 (April 5, 1976).

⁴ The Act, Section 2, 15 U.S.C. 78(b) (1975).

⁵ The Act, Sections 2 and 17A.

⁶ Securities Exchange Act Release No. 12489 (May 28, 1976), 41 FR 23255 (June 9, 1976).

⁷ Securities Exchange Act Release No. 12954 (November 3, 1976), 41 FR 49721 (November 10, 1976). NSCC subse-

quently consented to an extension of time for concluding these proceedings to January 13, 1977.

⁸ The Act, Section 17A(a)(1).

⁹ The Act, Section 17A(a)(2).

¹⁰ *Id.*

¹¹ The determinations the Commission is making under the Act and the duration of, conditions to and directives issued in connection with NSCC's registration are set forth below under "DETERMINATIONS, CONDITIONS AND DIRECTIVES."

¹² Securities and Exchange Commission, *Study of Unsafe and Unsound Practices of Brokers and Dealers*, H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971) [hereinafter cited as "Study of Unsafe and Unsound Practices"]; see also *Securities Industry Study*, Report of the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, H.R. Rep. No. 92-1519, 92d Cong., 2d Sess. (1972) [hereinafter cited as "1972 House Securities Industry Study"]; *Securities Industry Study*, Report of the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs for the Period Ended February 4, 1972, 92d Cong., 2d Sess. (Comm. Print 1972) [hereinafter cited as "1972 Senate Securities Industry"]; *Securities Industry Study*, Report of the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 93d Cong., 1st Sess. (Comm. on Banking, Housing and Urban Affairs, 93d Cong., 1st Sess. (Comm. Print 1973) [hereinafter cited as "1973 Senate Securities Industry Study"].

¹³ *Study of Unsafe and Unsound Practices*, *supra* note 12, at 13-14.

¹⁴ A "fail to deliver" represents the obligation of a broker or dealer to deliver securities to another broker or dealer beyond the conventional five business day settlement period. A "fail to receive," the converse of a "fail to deliver," represents the obligation of a broker or dealer to pay money to another broker or dealer against receipt of a security after the settlement period has passed.

¹⁵ *Clearance and Settlement of Securities Transactions, Hearings on S. 3412, S. 3297 and S. 2551 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs*, 92d Cong., 2d Sess., 95-96 (1972) [hereinafter cited as "Clearance and Settlement Hearings"].

¹⁶ *Id.* at 96; *Securities Processing Act, Hearings on H.R. 14567, H.R. 14826 and S. 3876 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, 92d Cong., 2d Sess., 100 (1972) [hereinafter cited as "Securities Processing Act Hearings"].

¹⁷ *Study of Unsafe and Unsound Practices*, *supra* note 12, at 13 and 14, 165-168; *1972 Senate Securities Industry*

Study, *supra* note 12, at 16-17; *1972 House Securities Industry Study*, *supra* note 12, at 4-6.

¹⁸ *Study of Unsafe and Unsound Practices*, *supra* note 12, at 11-20; *Clearance and Settlement Hearings*, *supra* note 15, at 97.

¹⁹ *1972 House Securities Industry Study*, *supra* note 12, at 6, 10.

²⁰ *Clearance and Settlement Hearings*, *supra* note 15, at 97.

²¹ *Id.*

²² *Id.*

²³ *1972 House Securities Industry Study*, *supra* note 12, at 9-10; *Study of Unsafe and Unsound Practices*, *supra* note 12 at 14.

²⁴ *Improved National Securities Transfer System, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 3876*, S. Rep. No. 92-1009, 92d Cong., 2d Sess. 1 (1972).

²⁵ See, e.g., Securities Exchange Act Release Nos. 9376 (November 8, 1971), 9594 (May 12, 1972), 9633 (June 14, 1972), 9856 (November 10, 1972), and 11497 (June 26, 1975).

²⁶ Pub. L. No. 91-598, 84 Stat. 1636 (1970).

²⁷ Section 11(h) of the SIPC Act, 15 U.S.C. 78 KKK(h) (1970).

²⁸ *Study of Unsafe and Unsound Practices*, *supra* note 12 at 35-36.

²⁹ *Id.* at 1.

³⁰ *Id.* at 5-6, 39.

³¹ See, e.g., *1972 House Securities Industry Study*, *supra* note 12; *1972 Senate Securities Industry Study*, *supra* note 12; *1973 Senate Securities Industry Study*, *supra* note 12.

³² *1972 House Securities Industry Study*, *supra* note 12, at 60.

³³ S. 3412 and H.R. 14567 (92d Cong., 2d Sess. (1972)).

³⁴ See S. 2551, S. 3297, S. 3876, H.R. 14826 and H.R. 16946 (92d Cong., 2d Sess. (1972)); S. 2058 and H.R. 5050 (93d Cong., 1st Sess. (1973)); S. 249 and H.R. 4111 (94th Cong., 1st Sess. (1975)).

³⁵ The Act, Section 2.

³⁶ The Act, Section 17A(a)(1).

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³⁷ *Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 4 (1975) [hereinafter cited as "Senate Report on S. 249"]. The Senate Report on S. 249 summarizes the Committee's concerns about securities processing as follows:

Processing economies, the public interest in protecting investors against loss of securities and cash, the financial and operational responsibilities of broker-dealers, the need for greater public confidence in the market system, and the expectation that the markets of the future will be required to handle higher volume, all require a modernized national system for consummating securities transactions. The need for legislation is clear. *Id.* at 6.

³⁸ *Id.* at 5.

³⁹ The Senate Report on S. 249 stated:

S. 249 would facilitate the creation of a system of centralized regulation and decisionmaking which extends to every facet of the securities handling process involving securities transactions within the United States—clearing agencies, depositories, corporate issuers and transfer agents. Only by the creation of a central authority in operational matters can paperhandling problems be squarely addressed; only the creation of such authority can assure the prompt development of a national clearing system. . . . *Id.* at 55.

⁴⁰ *Id.* at 55.

⁴¹ *Id.* at 126.

⁴² Specifically, the Senate Report on S. 249 stated:

Securities processing costs are necessarily passed on to investors in the form of the commission rates they are charged. Investor participation in the market, particularly the participation of the small investor, is in part related to the costs of investing. The Committee is convinced that one of the most important steps that can be taken to assure that commission charges are reasonable and fair is to foster cost savings in the processing end of the securities business. S. 249 is intended to do that. *Id.* at 5-6.

⁴³ *Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference*, H.R. Rep. No. 229, 94th Cong., 1st Sess. 102 (1975) [hereinafter cited as "Conference Report"].

⁴⁴ For example, in its report on H.R. 4111 (the House version of the 1975 Amendments), the House Committee on Interstate and Foreign Commerce, after stressing the projected efficiencies of a national clearing and settlement system, stated:

It should be made clear that the statutory charge to

develop a unified system for the clearance and settlement of securities transactions does not carry with it the call—nor does it grant the authority—to eliminate competition among separate entities in the performance of these functions. Many of the innovations and improvements in clearance and settlement of the last several years have been the product of vigorous and healthy competition among different service entities. Often new market entrants have been responsible for the most significant advances. The Committee believes, therefore, that a national system, through [sic] fully integrated, must make full allowance for the continuance and future entry of separate service entities. (*Securities Reform Act of 1975, Report of the House Comm. on Interstate and Foreign Commerce to Accompany H.R. 4111*, H.R. Rep. No. 94-123, 94th Cong., 1st Sess. 51 (1975)).

⁴⁵ It had been suggested that, in adopting the 1975 Amendments, Congress should require the Commission to cleave to a "least anticompetitive" standard in making rules and regulations under the Act, but Congress determined instead to grant broader discretion to the Commission and to view the need for competition in the context of the Act as a whole and its several objectives so that burdens on competition could be accepted where necessary or appropriate in furtherance of the purposes of the Act. See Statement of Donald I. Baker, Deputy Assistant Attorney General, Antitrust Division, Department of Justice, in *Hearings on S. 249 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs*, 94th Cong., 1st Sess. 244-252, 257-262 (1975); see also Securities Exchange Act Release No. 12737 (August 25, 1976) at 59-60, 41 FR 38847 (September 13, 1976).

⁴⁶ The characteristics of a national clearing and settlement system and the benefits which the Commission believes such a system would provide were discussed in detail in Securities Exchange Act Release No. 12954 (November 3, 1976), 41 FR 49721 (November 10, 1976).

⁴⁷ Trade comparison procedures vary depending on the trading mechanisms used, the kinds of securities traded and trading volume and are likely to present further variations as the nature of the securities markets changes.

⁴⁸ Transfer agent operations vary greatly in degree of automation and volume of transfers processed and are rapidly changing in response to new technologies.

⁴⁹ Pursuant to Section 17(f)(2) of the Act, 15 U.S.C. 78q(f)(2) (1975), the Commission has adopted a rule relating to fingerprinting requirements for, among others, clearing agencies and transfer agents. Securities Exchange Act Release No. 12214 (March 16, 1976), 41 FR 13594 (March 31, 1976), announced a lost and stolen securities program and adopted a rule regarding reporting and inquiry with respect to missing, lost and stolen securities. Securities Exchange Act Release No. 13053 (December 10, 1976), 41 FR 54923 (December

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16, 1976).

⁵⁰Pursuant to Sections 17(d)(1) and 19(g)(2) of the Act and Section 9(c) of the SIPC Act, 15 U.S.C. 78iii(c) (1975), the Commission has adopted and proposed rules for the allocation of responsibilities among "self-regulatory organizations," a term which Section 3(a)(26) of the Act defines to include registered clearing agencies. Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18879 (May 7, 1976).

⁵¹"Book entry movement" occurs when a clearing agency credits and debits participants' accounts to effect transfers between participants of securities registered in the name of the clearing agency and held for its participants.

⁵²See subparagraph 17A(a)(1)(A) of the Act.

⁵³The term "financial institutions" includes banks, insurance companies, investment companies, clearing agencies and any other entities which receive, deliver or hold securities. See subparagraph 17A(b)(3)(B) of the Act.

⁵⁴Comparison, the process by which participants in the securities markets reach agreement on the existence and terms of trades made in the marketplace, culminates in the production and submission to the accounting operation of contract lists representing transactions which have been confirmed by both parties.

⁵⁵The accounting process generates the money and securities settlement obligations of participants in clearing corporations. Continuous netting and daily balance order accounting systems generate net positions to be received or delivered and thereby minimize the required number of securities settlements; other accounting systems, such as trade-by-trade systems, do not net obligations.

⁵⁶Obligations generated by the accounting function are satisfied through the settlement process by the delivery and receipt of funds and securities.

⁵⁷Although the national system would include a number of entities through which one account processing would be available, a participant should not be required to belong, or relate directly, to more than one entity. See subparagraphs 17(a)(1)(A) and (D) of the Act.

⁵⁸See subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

⁵⁹See subparagraphs 17A(a)(1)(B) and (D) of the Act.

⁶⁰"Same-day turnaround" is the ability of a participant to redeliver securities to another participant on the day on which they are received.

⁶¹See subparagraph 17A(a)(1)(B), (C) and (D).

⁶²Currently, most clearing corporations guarantee transactions from and after settlement date by interposing the

corporation between the parties to the transactions.

⁶³A "mark-to-the-market" payment is the amount required by a clearing system from any party to a trade guaranteed by the system who becomes a potential net obligor of the system because the market price of the securities involved in the clearing transactions moves away from the contract price for the clearing transaction.

In the future it may be appropriate for clearing corporations to guarantee trades as of trade date and provide mark-to-the-market protection from trade date onward.

⁶⁴In a continuous netting system, settlement obligations run primarily between each participant and the system which, on settlement day, generates net obligations to deliver securities to the system against payment ("short-valued positions") or to receive securities from the system and make payment for them ("long-valued positions").

⁶⁵The non-book entry clearing components of the national system could use continuous netting, daily balance order, trade-by-trade or any other clearing system which would produce receive and deliver instructions.

⁶⁶In the case of certificate settlement, the same-day turnaround capacity of the national system would be limited by the location at which deposits and withdrawals are made and by transfer agent turnaround times. Accordingly, turnaround time could vary depending on whether the deposit or withdrawal were in-town or at a remote location and on whether the transfer agent involved were in-town or out-of-town.

⁶⁷The alternative—a link between each clearing entity and each depository in the system—would appear, at the present time, to pose significant communications problems. However, as long as all depositories are interfaced, a participant would be able to relate to the entire depository network by relating to one depository and would not necessarily require direct access to more than one depository.

⁶⁸In its ultimate form, the TAD concept would replace the stock certificate with computerized stockholder lists, maintained by TAD's, which would serve both as the issuers' stock records and as stockholders' ownership records. The lists would be updated continuously. Communications between TAD's and institutional customers, brokers and dealers, banks and others would be effected through instruction routing entities located in various financial centers throughout the United States. The instructions would direct the TAD's (i) to effect book entry transfers and pledges between participants by debiting and crediting the TAD's records and (ii), if necessary, to issue and deliver physical certificates.

⁶⁹A valued delivery is made against payment for the securities delivered; a free delivery is not made against payment.

⁷⁰Each central depository presumably would have to have a network of deposit and withdrawal facilities.

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71 Currently, the time necessary to complete the transfer process has led to the practice of withdrawing from a depository certificates registered in the name of the depository or of a depositing broker and executed in a form or accompanied by documents which make the certificates negotiable. This practice is necessary to permit delivery on a same-day basis to institutions and others which make payment only against receipt of certificates. Presumably, participation of more institutions in depositories will reduce the importance of an expedited certificate withdrawal capability.

72 In a TAC arrangement the depository maintains all but a working supply of certificates of an issue with the transfer agent custodian in the form of a balance certificate. As the need for certificates in the depository changes, the depository adjusts its in-house inventory by increasing or decreasing the number of shares held in-house in nominee name and correspondingly decreasing or increasing the number of shares held by the transfer agent. Appropriate shipments of certificates between the depository and transfer agent are made in connection with the adjustments.

73 The Act, subparagraph 17A(a)(1)(A).

74 The Act, subparagraph 17A(a)(1)(B), (C) and (D).

75 Reductions in the costs of relating to present systems would result primarily from such advantages of one account processing as (i) the ability of participants' back-office personnel to be familiar with one set of procedures and to use one set of forms in processing securities transactions, (ii) the ability of participants to make one daily money settlement (rather than multiple and possibly offsetting money settlements) and (iii) reductions in the facilities and personnel in participants' back offices associated with the delivery, receipt and handling of certificates.

76 Because currently a participant may have clearing positions settling in more than one system, individual clearing agencies may not become aware of more than a normal exposure even though the participant's combined exposure in all clearing systems is abnormally large.

77 The Department of Justice has recommended the retention of securities in depositories as a means of reducing securities thefts. "Suggestions by the Department of Justice for Safe Handling of Marketable Securities by Financial Institutions, Including Hints for Detecting Counterfeit, Forged, Worthless and Spurious Securities." Department of Justice announcement (December 23, 1974) at p. 1.

78 Adopted in Securities Exchange Act Release No. 11787 (November 3, 1975), 41 FR 52356 (November 10, 1975).

79 On December 1, 1975, the Commission granted registration pursuant to paragraph (c)(1) of the Rule to 13 clearing agencies: ASECC, Boston Stock Exchange Clearing Corporation ("BSECC"), Bradford Securities Processing Services, Inc. ("SPS"), The Depository Trust Company ("DTC"), Mid-

west Clearing Corporation ("MCC"), Midwest Securities Trust Company ("MSTC"), NCC, The Options Clearing Corporation ("OCC"), Pacific Clearing Corporation ("PCC"), Pacific Securities Depository Trust Company ("PSDTC"), SCC, Stock Clearing Corporation of Philadelphia ("SCCP") and TAD Depository Corporation ("TADDC").

Subsequently, pursuant to paragraph (c)(1) of the Rule, the Commission registered the New England Securities Depository Trust Company ("NESDTC"), a wholly-owned subsidiary of the Boston Stock Exchange, upon the same findings made in connection with the December 1, 1975, registrations.

80 The Act, subparagraph 17A(b)(3)(A).

81 The Act, subparagraph 17A(b)(3)(E).

82 The Act, subparagraph 17A(b)(3)(F).

83 The Act, subparagraph 17A(b)(3)(I).

In accordance with Rule 17Ab2-1 under the Act, the Commission has not made any determinations with respect to the following portions of subparagraphs (A)—(I) of Section 17A(b)(3) of the Act: the portion of subparagraph (A) pertaining to NSCC's ability to enforce compliance by its participants with its rule; any of subparagraphs (B), (C) or (D); the portions of subparagraph (F) prohibiting NSCC's rules from permitting unfair discrimination among participants or regulating matters not related to the purposes of Section 17A of the Act or the administration of NSCC; or any of subparagraphs (G) and (H). These determinations will be made prior to the expiration of NSCC's 18-month registration.

84 The Act, Section 17A(a).

85 In response to the memorandum of understanding, the Commission released a letter addressed to the NASD and the NYSE in which the Commission recognized the need to develop a national system and recommended criteria for the Committee to consider in connection with its deliberations. Securities Exchange Act Release No. 10631 (February 7, 1974).

86 In general, ASECC clears American Stock Exchange, Inc. ("Amex") transactions; NCC clears OTC transactions; and SCC clears NYSE transactions.

87 SIAC is a communications, service and securities processing entity, owned $\frac{2}{3}$ by the NYSE and $\frac{1}{3}$ by the Amex, which performs all securities processing operations for both SCC and ASECC.

88 The termination penalty was \$250,000 if BNCC were terminated between October 1, 1974, and September 30, 1976, and \$125,000 if BNCC were terminated between October 1, 1976, and September 30, 1977. There was no penalty for termination after October 1, 1977.

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⁸⁹On April 23, 1975, Peter Del Col, Chairman of the Board of Bradford, wrote to the Amex, the NASD and the NYSE offering to bid competitively against SIAC for a contract to perform securities processing for ASECC, NCC and SCC and requesting the NYSE and the Amex to make available to Bradford information on which to base its bid. By letter dated May 6, 1975, Chairman James J. Needham of the NYSE informed Bradford that it would be premature for the NYSE to consider Bradford's proposal and request for information before completion of the discussions then under way between the NASD and SIAC user committees.

⁹⁰"A Plan for Consolidation of Clearance and Settlement Activities for Listed and Over-the-Counter Stocks," July 15, 1975.

⁹¹The documents filed by NSCC, related correspondence, memoranda of meetings, transcripts of the oral presentations of data, views and arguments and comment letters on the application and on Commission releases issued in connection with the application are contained in Securities and Exchange Commission File No. 600-15 and are available for inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

⁹²N.Y. Uniform Commercial Code, Sections 8-102(3) and 8-320, *supra* note 2. The agreement contemplates that the Amex, NASD and NYSE, the parent corporations of ASECC, NCC and SCC, may become transferees of the stock of NSCC received by the subsidiary clearing and settlement entities.

⁹³During the Commission's review of rules proposed by NSCC for combined systems operations, NSCC, as NCC's assignee under the NCC-BNCC facilities management, will exercise NCC's termination right by paying BNCC a \$125,000 early termination penalty. Thereafter, NSCC will direct SIAC to perform the NCC processing functions performed currently by BNCC in addition to the ASECC-SCC processing functions SIAC performs currently.

⁹⁴Sixty days before the election, the nominating committee's slate of candidates for the participant directors' seats and for the following year's nominating committee will be circulated to NSCC's membership. The membership will be able to propose alternative nominees upon the filing of a petition by the lesser of five percent of NSCC's participants or 15 participants. If any alternative nominees are proposed, a vote will be held in which the participants, voting cumulatively under a formula based on usage of NSCC, will select the nominees to be elected to the NSCC board and the nominating committee. NSCC's shareholders will vote for the slate selected by the nominating committee, if no opposing nominees are proposed, or for the nominees who received a majority of the participants' votes, if opposing candidates are proposed and an election is held.

⁹⁵The ceiling on payments to be received by a self-regulator would be subject to the proviso that any amounts in excess of

its ceiling for a given year would be paid to the self-regulator to the extent that in prior years the fees received were less than the ceiling.

⁹⁶Not all NSCC's fees will be based on cost, however; NSCC has indicated its fee structure will be designed to enable NSCC participants located outside New York City and relating to NSCC through the former NCC branch network to pay the same clearing fees as NSCC participants located in New York City.

⁹⁷Settlement is the process through which securities trading obligations are satisfied by delivery and receipt of funds and securities.

⁹⁸All current clearing members of ASECC-SCC are participants in DTC.

⁹⁹Sponsored accounts in DTC will be guaranteed by NSCC and, for participants with low clearing volume, will make that form of participation less expensive than direct participation. In order to encourage direct participation in DTC by any sponsored participant whose clearing volume increases to a point at which direct participation becomes economically justifiable, a participant's sponsored account fees will graduate with increases in its clearing volume.

¹⁰⁰Senate Report on S. 249, *supra* note 37, at 58. The Conference Committee observed, in resolving the differences between the Senate and House bills that preceded the 1975 Amendments, that those bills were both in agreement and would amend the Act "to establish a system for effective regulation and centralized decision-making extending to every facet of the securities handling process in the United States—clearing agencies, securities depositories, corporate issuers, and transfer agents." *Conference Report, supra* note 43, at 102.

¹⁰¹See Section 2 of the Act.

¹⁰²Section 17A(a)(2) of the Act.

¹⁰³In establishing the requirements for passing on applications for registration of, among other things, clearing agencies, Section 19(a)(1) of the Act directs the Commission to expand the scope of its concern beyond Section 17A by providing that "[t]he Commission shall grant such registration if it finds that the requirements of [the Act] and the rules and regulations thereunder with respect to the applicant are satisfied."

¹⁰⁴Transcript *In the Matter of Application for Registration of National Securities Clearing Corporation*, Commission File No. 600-15 ("Proceeding Transcript"). During the course of the oral presentation of data, views and arguments, the Commission received presentations from 23 individuals representing the following organizations: ASECC, Amex, Boston Stock Exchange ("BSE"), BSECC, Legg Mason, Division First Regional Securities, Inc. ("Legg Mason"), MCC, MSTC,

Midwest Stock Exchange, Inc. ("MSE"), NASD, NCC, NSCC, NYSE, PSDTC, Pacific Stock Exchange, Inc. ("PSE"), Philadelphia Stock Exchange, Inc. ("Phlx"), Securities Industry Association ("SIA"), Securities Operating Division of the SIA ("SOD"), SCC, SCCP and Wedbush, Noble Cooke, Inc. ("Wedbush"). In excess of 500 pages of oral presentations were recorded and the Commission received over 300 pages of additional materials supplementing those presentations.

¹⁰⁵See Section 23(c) of the Act, 15 U.S.C. 78w(c) (1975); see also 17 CFR 201.27.

¹⁰⁶See discussion under "IMPLEMENTATION AND MONITORING" *infra*.

¹⁰⁷See discussion under "Background to the Application" *supra*.

¹⁰⁸Section 17A(e) of the Act directs the Commission to "use its authority under [the Act] to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce."

¹⁰⁹See discussion *supra* under "Characteristics of a National System", with respect to the capabilities which the Commission believes a national clearing and settlement system should have in order to satisfy the requirements of Section 17A of the Act.

¹¹⁰Proceeding Transcript, *supra* note 104, and related documents.

¹¹¹See "Background to the Application" and discussions under "Safeguards and Fixing Rates or Fees" and "Capacity to Facilitate and Promote the Prompt and Accurate Clearance and Settlement of Securities Transactions" *supra*.

¹¹²Securities Exchange Act Release No. 9950 (Jan. 16, 1973) at 3-4, 38 FR 3902 (Feb. 8, 1973). [Footnote omitted.] See also *PBW Stock Exchange v. Securities and Exchange Commission*, 485 F. 2d 718 (3d Cir. 1973), *cert. denied*, 416 U.S. 969 (1974).

¹¹³Justification For a Consolidation of New York Clearing Facilities, [hereinafter cited as "Justification"] at 2, 10, 12.

¹¹⁴See discussion under "Cost Savings" *supra*.

¹¹⁵The comparison estimated that improvements necessary under Model II to enable both the ASECC-SCC and NCC systems to provide Phase II levels of service would increase annual clearing corporation operating costs from the current \$18.8 to \$21.8 million range to the \$23.6 to \$27.1 million range, a net increase of from \$4.8 to \$5.3 million. Because participants would experience estimated annual savings of from \$10.0 to \$13.3 million, however, operations under Model II would generate net annual industry savings of \$5.2 to \$8.0

million. Justification *supra* note 113, at 17.

¹¹⁶The NSCC estimates are based on comparisons of projected costs under the general categories of "Manpower," "Data Processing," "Branch Network," "Facilities," "General" and "DTC Cost Increase." After reviewing the components of those categories, the Commission concluded that the Model II estimates for the "Manpower," "Data Processing," "Facilities" and "DTC Cost Increase" categories were overstated in an aggregate amount of \$1 million. Justification *supra* note 113 Exhibit I.

¹¹⁷The current annual operating costs of ASECC, NCC and SCC are \$18.8 to \$21.8 million, depending on volume.

¹¹⁸The Commission's staff requested NSCC to assume, in comparing Model I and Model II clearing corporation operating costs, that participant savings would be the same under Model I and Model II. The assumption that Model I and Model II could provide identical services is open to question, however, and it is possible that participant savings under Model II could be higher or lower than under Model I.

¹¹⁹See, e.g., Proceeding Transcript, *supra* note 104, at 6-15 (NSCC), NSCC memorandum, filed June 4, 1976, containing a narrative description of the proposed merger and NSCC's responses to a variety of questions posed by the staff, and letters of Bache Halsey Stuart Inc., August 23, 1976, and Bosworth Sullivan & Company, Inc., August 20, 1976.

¹²⁰See, e.g., Proceeding Transcript, *supra* note 104, at 119-122 (SCCP), 151-154 (PSE) and 257 (MSE).

¹²¹A "full interface" is one through which any participant in either of the interfacing clearing corporations can move all its transactions in issues eligible for comparison, clearing and settlement at both clearing corporations.

¹²²The conditions to NSCC's registration are set forth under "DETERMINATIONS, CONDITIONS AND DIRECTIVES" *infra*.

¹²³See discussion of one account processing under "Characteristics of a National System" *supra*.

¹²⁴While the absence of interface charges will have the effect of spreading the costs of interfaces among all participants in a clearing corporation, the Commission believes it is appropriate for all clearing corporation participants to defray the costs of the national system's interface network. Current trading practices obligate the selling side of a transaction to make delivery to the buying side of the transaction. Once interfaces are in place, a party to a transaction effected on an exchange or through use of an OTC trading mechanism usually will not know the location at which the other party to the transaction has elected to clear and settle securities transactions. As a result, all parties to exchange and OTC transactions would have an equal likelihood of entering into sale transactions which would occasion the use of interfaces.

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¹²⁵NSCC would provide for participation by qualified brokers, dealers and financial institutions; see subparagraph 17A(b)(3)(B) of the Act.

¹²⁶See "Characteristics of a National System" *supra*.

¹²⁷On December 19, 1975, the Commission adopted Rule 19c-1 under the Act. Pursuant to that Rule, after January 2, 1977, exchange rules may not prevent exchange members, acting as agents, from effecting transactions in listed securities on other exchanges or OTC, with a third market maker or non-member block positioner. Securities Act Release No. 11942 (December 19, 1975) (January 30, 1976). Accordingly, after January 30, 1976, a broker or dealer which, during the course of a trade, executes sales of 1,000 shares of X Company on the NYSE and executes purchases of 1,000 shares of X Company OTC with third market makers may have two settling positions in X Company shares, one at SCC and one at NCC.

¹²⁸Under existing arrangements participants in ASECC and SCC may make one daily money settlement for obligations to the two clearing corporations.

¹²⁹See discussion under "Characteristics of a National System" *supra*; see also subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

¹³⁰The NCC depository-equivalent free account currently includes most issues included in securities depositories and existing interfaces between SCC and MCC. PCC and SCCP permit transactions in issues listed on those exchanges to be accounted for and settled through SCC.

¹³¹See discussion under "Characteristics of a National System" *supra*.

¹³²The second condition to NSCC's registration is set forth under "DETERMINATIONS, CONDITIONS AND DIRECTIVES" *infra*. Through participation in NSCC, a competing clearing corporation presumably would be able to effect comparison as agent for its participants.

¹³³See discussion of one account processing under "Characteristics of a National System" *supra*; see also subparagraphs 17(a)(1)(A), (C) and (D) of the Act.

¹³⁴Justification, *supra* note 113, Exhibit II at 10-11, 18-19.

¹³⁵See discussion of "Characteristics of a National System" *supra*; see also subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

¹³⁶See discussion under "The Paperwork Crisis" and under "Characteristics of a National System" *supra*.

¹³⁷The components of those costs are drafting charges, interest expense, messenger fees, correspondent fees and direct clearing fees.

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¹³⁸See, e.g., Proceeding Transcript, *supra* note 104, at 37 (NSCC), 348-350 (Legg Mason), letters of Wayne Hummer & Co., June 11, 1976, and Robinson-Humphrey Co., Inc., June 17, 1976.

¹³⁹Proceeding Transcript, *supra* note 104, at 436 (NSCC). See also letters of Prescott, Ball & Turben, June 16, 1976, and Wayne Hummer & Co., June 11, 1976.

¹⁴⁰See, e.g., Proceeding Transcript, *supra* note 104, at 190-194 (BSECC), letters of SCCP, July 23, 1976, C.A. Mathews & Co., July 2, 1976, and United States Department of Justice, July 23, 1976, and November 19, 1976.

¹⁴¹While one commenter on the Commission's proposed conditions implied that NSCC's proposed geographic price mutualization would artificially restrict competition with NSCC's branch network by correspondent brokers and dealers, the Commission believes it is not inappropriate that services which have developed in the absence of a national system, be curtailed or modified in the processing environment which a national system will foster. See letter of Pershing & Co., Inc., November 19, 1976.

¹⁴²See, e.g., Proceeding Transcript, *supra* note 104, at 188-189 (BSECC), and July 23, 1976, letter of United States Department of Justice.

¹⁴³See discussion under "Effects on Competition Among Brokers and Dealers" *supra*.

¹⁴⁴See discussion under "Capacity to Achieve the Linking of Clearing and Settlement Systems and Facilitate the Establishment of a National System" *supra*.

¹⁴⁵As of the date of NSCC's application there was a 100 percent membership overlap between ASECC and SCC, and 59 percent of NCC's members, accounting for 82 percent of its volume, were ASECC-SCC members. NSCC memorandum, filed June 4, 1976, containing a narrative description of NSCC's plans and responses to questions of the Commission's staff, p. 9.

¹⁴⁶Proceeding Transcript, *supra* note 104, at 90, 98-99 (NASD).

¹⁴⁷The Commission's monitoring measures are described under "IMPLEMENTATION AND MONITORING" *infra*.

¹⁴⁸Gordon S. Macklin, President of the NASD and Chairman of the Board of NCC, advised the Commission "[w]e are concerned that the result of a complete interfacing with two clearing corporations would mean that we would die." See Proceeding Transcript, *supra* note 104, at 98. See also Proceeding Transcript, *supra* note 104, at 233 (SIA) and 319 (SOD).

¹⁴⁹See, e.g., Proceeding Transcript, *supra* note 104, at 18-21, 497-498 (NSCC), and 90 (NASD).

¹⁵⁰*Id.* at 137 (SCCP), 155 (PSE), 384 (Jerome Shuman of Georgetown University Law Center); letters of United States Department of Justice, July 23 and November 19, 1976.

¹⁵¹See, e.g., June 15, 1976, letter from the Commission's staff to BNCC and June 15, 1976, response of BNCC.

¹⁵²The Act, Section 17A(a)(2).

¹⁵³The Act, subparagraph 17A(a)(1)(D).

¹⁵⁴The Act, Section 17A(a)(2).

¹⁵⁵Geographic price mutualization is discussed under "Effects on Competition Among Brokers and Dealers" *supra*.

¹⁵⁶See discussion under "Comparison, Accounting and Settlement" *supra*.

¹⁵⁷See discussion under "Book Entry Clearing" *supra*.

¹⁵⁸*Id.*

¹⁵⁹See discussion under "Cost Savings" *supra*.

¹⁶⁰See discussion under "Effects on Competition Among Brokers and Dealers" *supra*.

¹⁶¹In subparagraph 17A(a)(1)(D) of the Act Congress finds that the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors.

¹⁶²See, e.g., Proceeding Transcript, *supra* note 104, at 118-119, 131-132 (SCCP), 188 (BSECC), and July 23, 1976, and November 19, 1976, letters of United States Department of Justice.

¹⁶³See, e.g., Proceeding Transcript, *supra* note 104, at 190-192 (BSE), and letters of C.A. Mathews & Co., July 2, 1976, and United States Department of Justice, July 23, 1976.

¹⁶⁴See, e.g., Proceeding Transcript, *supra* note 104, at 38-39, 76, 436-437 (NSCC), 350-354 (Legg Mason).

¹⁶⁵The cost of establishing a link between an NSCC branch facility and another registered clearing corporation would be borne by the registered clearing corporation. Of course, since no clearing corporation would be obligated to use any given facility, any clearing corporation which believed that NSCC's provision of services was inadequate could establish its own facility. Moreover, while NSCC could determine to discontinue a branch facility, NSCC could not re-open the facility without providing access to other registered clearing agencies.

¹⁶⁶In commenting on the "Common Branch Facility Condition," clearing corporation which would be competitors of NSCC expressed concern that NSCC's management of the

facilities might result in discrimination in favor of NSCC in the operation of those facilities. The measures the Commission is taking in implementing and monitoring this order and the directive to NSCC to establish coordinating groups in connection with the implementation of interfaces and branch facilities are intended to reduce the likelihood of any such abuse and its duration should it arise. The third condition to NSCC's registration and the directive for the establishment of coordinating groups are set forth under "DETERMINATIONS, CONDITIONS AND DIRECTIVES" *infra*.

¹⁶⁷If an interface charge were imposed on movements from NSCC, a participant in another clearing corporation would have to pay NSCC's comparison charge, an interface charge and the other clearing corporation's accounting and settlement charge in order to compare, clear and settle a transaction. The same broker or dealer using NSCC's regional network would have to pay NSCC's comparison charge, NSCC's accounting and settlement charge and, assuming the cost of operating the network were not geographically mutualized, an additional charge for network operations and communications. Since it is NSCC's intention to engage in geographic price mutualization of the operating cost of the regional network, a broker or dealer using the regional network will pay the same comparison, accounting and settlement charge as a broker or dealer located in New York. If NSCC imposes an interface charge whose effect is to make the combined charges paid by a broker or dealer of moving compared trades from NSCC through an interface with another clearing corporation higher than the charges of moving compared trades through NSCC's branch network, the broker or dealer could be compelled to use the branch network. Similarly, NSCC participants which send compared trades to another clearing corporation for accounting and settlement would pay a hidden interface fee if NSCC imposed an inflated comparison charge defraying part of the cost of NSCC's accounting and settlement function and charged NSCC participants less than cost for performing the accounting and settlement function.

¹⁶⁸The terms and arrangements pursuant to which registered clearing agencies not mentioned specifically in this order will be able to participate in or interface with NSCC during the interim preceding initiation of Phase II operations and thereafter would be subject to the requirements of the Act, including those of subparagraphs 17A(b)(3)(B) and (F) which, among other things, require that the rules of registered clearing agencies, not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency's facilities, foster cooperation among persons engaged in the clearance and settlement of securities transactions and remove impediments to attainment of a national clearing system.

¹⁶⁹The Commission's monitoring program is discussed under "IMPLEMENTATION AND MONITORING" *infra*.

¹⁷⁰The arrangements between interfacing clearing corporations contemplated by the Free Interface Condition would not

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preclude NSCC or another interfacing clearing corporation from charging trade recording or comparison fees or from charging the costs of interface operations to other clearing operations in ways which do not have the effect of establishing an interface fee. The Commission recognizes that a policy disfavoring interface charges may be inappropriate for interfaces between entities other than clearing corporations, and for certain links between clearing corporations and entities performing operations other than comparison and accounting and may prove inappropriate for the interfaces and links affected by the Free Interface Condition.

¹⁷¹For example, even though an NSCC participant could clear and settle Amex, MSE, NYSE and OTC transactions through NSCC, the participant could compare only NYSE, Amex and OTC transactions through NSCC and would have to maintain a separate presence at, or communications with, MCC in order to compare MSE transactions. Conversely, a participant in MCC would be able to clear and settle Amex, MSE, NYSE and OTC trades through MCC but would have to maintain a separate presence at, or communications with, NSCC for the comparison of Amex and NYSE transactions. Because for most brokers and dealers regional exchange volume is a relatively small percentage of their total transactions and because the regional exchanges use a "floor derived" or "locked-in" trade procedure which streamlines the comparison function, the inability of an NSCC participant to compare MCC transactions through NSCC probably would not be sufficiently serious to require maintenance of a presence in Chicago. On the other hand, in order to compare transactions on the Amex and NYSE which, because of high transaction volume, have not implemented "locked-in" trade procedures, a participant in MCC probably would be required to maintain a presence in New York or to use a correspondent or direct clearing. In such a case it seems likely that the broker or dealer would either direct its comparison, clearing and settlement flow to NSCC or have a correspondent perform all its comparison, clearing and settlement function.

¹⁷²The standards for determining cost pursuant to the second condition to NSCC's registration would be developed during the interim before implementation of Phase II in conjunction with the Commission's monitoring of clearing agency costs and revenues.

¹⁷³See discussion of the Commission's current program for the registration of clearing agencies under "Statutory Determinations to be Made in Connection with NSCC's Registration" *supra*. In connection with that program, the Commission will be seeking to insure that the rules of registered clearing agencies permit appropriate interfacing and participation by other registered clearing agencies and do not discriminate among registered clearing agencies or otherwise impede competition among registered clearing agencies.

¹⁷⁴Section 31(b) of the 1975 Amendments provides a statutory mechanism for the Commission to review the rules of national securities exchanges and registered securities associations for compliance with the Act. On December 1, 1976,

pursuant to that subsection, the Commission mailed letters to the exchanges and the NASD notifying them that, and specifying the respect in which, certain of their rules may not be in compliance with the Act. Among the rules cited in the Commission's letters were approximately 160 rules pertaining to securities processing, many of which concerned restrictive operational links between securities markets and their securities processing subsidiaries. Securities Exchange Act Release No. 13027 (December 1, 1976) 41 F.R. 53557 (December 7, 1976).

¹⁷⁵The OTC Comparison Condition contemplates that registered clearing agencies which do not elect to perform comparison for OTC transactions between their participants will contract with another registered clearing agency for performance of the function at a price determined by negotiation between the parties. The condition contemplates also that NSCC will provide relevant documentation and error maintenance information.

¹⁷⁶The OTC Comparison Condition is set forth under "DETERMINATIONS, CONDITIONS AND DIRECTIVES" *infra*.

¹⁷⁷See, e.g., Proceeding Transcript, *supra* note 104, at 123-124, 139-141 (Phlx and SCCP) and 170-171 (PSE).

¹⁷⁸*Id.* at 112-113 (Phlx), 189 (BSE) and 247 (MSE).

¹⁷⁹*Id.* at 112-113 (Phlx) and 197-198 (BSE).

¹⁸⁰See, e.g., letter of Pershing & Co., Inc., November 19, 1976.

¹⁸¹See, e.g., Proceeding Transcript, *supra* note 104, at 72 (NSCC), 92-93, 95 (NYSE) and 93-94 (NASD).

¹⁸²Letter dated June 15, 1976, from Francis J. Palamara (NYSE) and letter dated June 15, 1976, from Richard N. Priest (NYSE).

¹⁸³Letter dated June 16, 1976, from Joseph J. Gulick (ASECC).

¹⁸⁴Letter dated June 14, 1976, from C. Richard Justice (NCC).

¹⁸⁵See, e.g., Proceeding Transcript, *supra* note 104, at 95 (NYSE).

¹⁸⁶National securities exchanges file financial information with the Commission in connection with the Commission's Survey of Self-Regulatory Organizations and Subsidiaries.

¹⁸⁷In Securities Exchange Act Rel. No. 12935 (October 28, 1976), 41 F.R. 49091 (November 8, 1976), the Commission announced the adoption of Rule 17d-2 under the Act, 17 CFR 240.17d-2, which, among other things, invites self-regulatory organizations to propose to the Commission plans for allocating among themselves specified statutory responsibilities on

or before March 15, 1977. In the release the Commission ordered oral hearings on the issues raised by the allocation of self-regulatory responsibilities; the hearings were held during the week of December 20, 1976.

¹⁸⁸If the NSCC facilities management package had been submitted to competitive bid, the NYSE and the Amex presumably would have insisted on specifications requiring the successful bidder to assume the \$14.7 million in liabilities for space and equipment leases, accrued vacation and severance pay and reprogramming obligations which are reflected in the buy-out provisions of the current Management Agreement. To the extent that the amounts payable under the buy-out provision would have been assumed by a successful bidder, after the second year of the Management Agreement's term a processor retained by NSCC in connection with a buy-out of SIAC probably would have to assume roughly the same portion of the \$14.7 million as an initial successful bidder would have been left with at the end of the second year.

¹⁸⁹See, e.g., letters of United States Department of Justice, July 23 and November 19, 1976, and letter dated December 3, 1976 from Allen Karron to George A. Fitzsimmons.

¹⁹⁰See, e.g., Proceeding Transcript, *supra* note 104, at 52-53 (NSCC), 87-89 (Amex and NASD).

¹⁹¹*Id.*; NSCC written response to June 2, 1976, letter from the Commission's staff.

¹⁹²For example, except for NCC, each of the 14 clearing agencies currently registered with the Commission either performs its own processing operations or has them performed by an operations subsidiary of its parent corporation.

¹⁹³See NSCC written submission to the Commission filed on June 4, 1976, containing a narrative description of the proposed merger and NSCC's responses to a variety of questions posed by the staff.

¹⁹⁴See discussion under "Characteristics of a National System" *supra*.

¹⁹⁵For the purposes of analysis it was assumed that the decisions to compete, merge or discontinue clearing and settlement operations would be made by NCC and the NASD. It was assumed also that each registered clearing agency would have the financial and operational capability to comply with the Commission's rules requiring clearing agencies to provide the levels of service necessary for the establishment of a national system.

¹⁹⁶Because the Commission's analysis assumed that each of the alternatives would provide the same levels of service as NSCC's Phase II operations pursuant to the conditions, participant savings were assumed to be the same for each alternative.

¹⁹⁷While ASECC and SCC theoretically could establish their own branch network under each of the alternatives, establishment and operation of more than one branch network would entail duplicative implementation and operational costs and would not necessarily be used to provide access to registered clearing agencies without branch networks of their own.

¹⁹⁸If the clearing agency function were shown to be a natural monopoly, the Commission would have to consider whether the artificial measures necessary to keep several clearing agencies in existence would inappropriately raise the costs of clearing and settlement to brokers and dealers and investors. Moreover, even in the absence of a determination that clearing and settlement operations are a natural monopoly, the Commission recognizes that at a future date new developments in clearing and settlement operations may warrant the performance of all or discreet portions of those operations by a single, cooperative organization.

Examples of such cooperative organizations include local clearing house associations through which banks clear checks drawn on local banks and the federal reserve bank clearing system through which banks clear checks drawn on banks in other localities. The existence of the clearing house associations and the federal reserve system has not adversely affected competition among banks. Member of clearing house associations are not precluded from direct presentation to local banks or from by-passing the federal reserve system by presenting checks to non-local banks through correspondent banks.

¹⁹⁹See discussions under "Effects on Competition Among Brokers and Dealers" and "Effects on Competition Among Clearing Agencies" *infra*.

²⁰⁰Senate Report on S. 249, *supra* note 37, at 126.

²⁰¹See, e.g., Sections 6, 11A, 15A, 17, 17A, 19 and 21 of the Act.

²⁰²In Securities Exchange Act Release No. 12759 (September 1, 1976), 41 FR 38841 (September 13, 1976) the Commission announced the institution of proceedings to determine whether to grant or deny the registration of the 13 clearing agencies registered on December 1, 1975, at the expiration of the registrations previously granted to the registrants pursuant to paragraph (c) of Rule 17Ab2-1. The Commission instituted these proceedings in order to obtain data, views and arguments concerning the appropriateness of fully registering each of the registrants, with particular reference to the compliance of their organization and rules with the objectives of Section 17A of the Act, including the determinations called for by subparagraphs (A)-(I) of Section 17A(b)(3) of the Act.

²⁰³See note 168 *supra*.

²⁰⁴See discussions under "Payments to the Amex, NASD and NYSE" in "THE NSCC APPLICATION" and "DETERMI-

SEC DOCKET/1483

SECURITIES EXCHANGE ACT OF 1934
Release No. 13164/January 13, 1977

The Securities and Exchange Commission has issued notices giving interested persons until January to request hearings on applications filed by the following stock exchanges for unlisted trading privileges in the common stock of the specified companies:

Boston Stock Exchange—Fred S. James & Co., Inc.;
Loctite Corp;
United States Filter Corp.

Philadelphia Stock Exchange, Inc.—National Mines
Service Co.

SECURITIES EXCHANGE ACT OF 1934
Release No. 13165/January 13, 1977

The Securities and Exchange Commission has issued orders granting the applications of the following stock exchanges for unlisted trading privileges in the common stock and other specified securities of the following companies:

Philadelphia Stock Exchange, Inc.—Sabine Royalty
Corp.

Midwest Stock Exchange, Inc.—Corning Glass
Works; Kubota Ltd. (American Depositary Receipt
shares, each representing 20 shares of dollar vali-
dated common stock, 50 Yen par value); Pioneer
Electronic Corp. (American Depositary Receipt
shares, each representing 2 shares of common
stock, 50 Yen par value).

Boston Stock Exchange—Big Three Industries, Inc.
(Capital Stock, \$2.50 par value); Hannaford Bros.
Co.; Kubota Ltd. (American Depositary Receipt
shares, each representing 20 shares of common
stock, 50 Yen par value); New England Nuclear
Corp.; Pioneer Electronic Corp. (American Depos-
itary Receipt shares, each representing 2 shares of
common stock, 50 Yen par value); and Wang Labo-
ratories, Inc.

1484/SEC DOCKET

SECURITIES EXCHANGE ACT OF 1934
Release No. 13166/January 13, 1977

The Securities and Exchange Commission has issued a notice giving interested persons until February 7 to request a hearing on an application of the McDonough Company to withdraw its common stock from listing and registration on the American Stock Exchange, Inc.

SECURITIES EXCHANGE ACT OF 1934
Release No. 13167/January 13, 1977

Administrative Proceeding File Number 3-5123

In the Matter of

PHILIPSBORN, INCORPORATED

File No. 81-234

ORDER GRANTING APPLICATION PURSUANT TO SEC-
TION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the Application of Philipsborn, Incorporated ("Applicant"), a wholly-owned subsidiary of Philout, Inc., pursuant to Section 12(h) of the Securities Exchange Act of 1934 for an exemption from the provisions of Section 13 of the 1934 Act.

It appeared to the Commission that the granting of the requested exemption would not be inconsistent with the public interest or the protection of investors in view of the fact that none of the securities of the Applicant subject to Section 13 are held by any person other than Philout, Inc. ("Philout") and the financial information about the Applicant is incorporated in all reports of the Outlet Company (the parent of Philout) filed with the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 13168/January 13, 1977

ADMINISTRATIVE PROCEEDING
FILE NO. 3-5145

In the Matter of

JAMES U. BLANCHARD, III d/b/a

Document No. 2.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4A

Proposed Rule Changes
by

RECEIVED
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FEB 22 1977
SECURITIES AND EXCHANGE COMMISSION

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FEB 23 1977

DIVISION OF MARKET REGULATION

NATIONAL SECURITIES CLEARING CORPORATION
(Exact Name of Self-Regulatory Organization)

File No. SR-NSCC-77-1.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

Rule 3, Section 1 of the Rules of the SCC Division of National Securities Clearing Corporation (NSCC) states that the SCC Division shall maintain a list of securities which may be the subject of contracts cleared through the SCC Division and which are called "Cleared Securities" and that the SCC Division may from time to time add securities to such list.

The SCC Division of NSCC proposes to add to its list of Cleared Securities all debt securities listed from time to time on the American Stock Exchange, Inc. (AMEX).

Rule 3, Section 1 of the Rules of the ASECC Division of NSCC states that the ASECC Division shall maintain a list of the securities which may be the subject of contracts cleared through the ASECC Division and which are called "Cleared Securities" and that the ASECC Division may from time to time remove securities from such list.

The ASECC Division of NSCC proposes to remove from its list of Cleared Securities all debt securities listed from time to time on AMEX.

(b) Not applicable.

(c) Not applicable.

2. Procedures of Self-Regulatory Organization

The Board of Directors of NSCC has approved the proposed rule changes.

3. Purpose of Proposed Rule Change

NSCC proposes as soon as possible to include in its interfaces with Midwest Clearing Corporation (MCC), Pacific Clearing Corporation (PCC) and Stock Clearing Corporation of Philadelphia (SCCP) the ability to settle transactions in debt securities listed on the New York Stock Exchange, Inc. (NYSE) and AMEX. In anticipation of Phase II of NSCC's operations as contemplated by the Order of the Securities and Exchange Commission granting registration to NSCC as a clearing agency (Securities Exchange Act of 1934, Release No. 16163) NSCC has developed a data processing capability to permit such transactions to be included in such interfaces. This data processing capability will work most efficiently if it operates in connection with a single NSCC division rather than two or three NSCC divisions. As a consequence, NSCC proposes that this data processing capability accept transactions in debt securities for such interfaces from the SCC Division. In order to permit the inclusion of debt securities listed from time to time on AMEX in such

interfaces, NSCC proposes that all AMEX listed debt securities transactions to be settled through its SCC Division rather than through its ASECC Division.

4. Basis under the Act for Proposed Rule Change

(a) Not applicable.

(b) The proposed rule change relates to the removal of impediments to and perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by permitting the expansion of the NSCC interfaces with MCC, PCC and SSCP.

5. Comments Received From Members, Participants or Others on Proposed Rule Change

None.

6. Burden on Competition

NSCC does not perceive that the proposed rule change would constitute a burden on competition.

7. Extension of Time Periods for Commission Action

NSCC does not consent to an extension of the time periods specified in Section 19(b)(2) of the Act. Further, NSCC requests that the Commission find good cause for taking action on this submission as soon as possible and prior to the thirtieth day after the date of publication of notice of the filing of this submission pursuant to Section 19(b)(2) of the Act, since the proposed rule change would further the establishment of the national system for the prompt and accurate clearance and

settlement of transactions by expanding the existing interfaces with MCC, PCC and SCCP for the benefit of all participants.

8. Basis for Rule Taking, or Being Put into, Effect Pursuant to Section 19(b)(3)

Not applicable.

9. Exhibits

List of Exhibits to be filed:

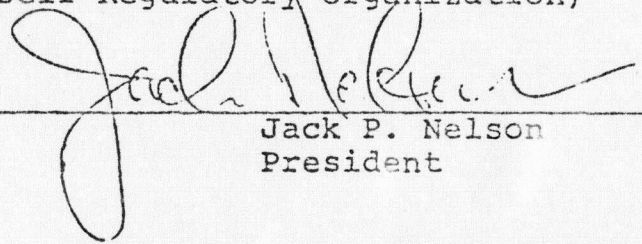
1. Form of Notice of Proposed Rule Change for Federal Register.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NATIONAL SECURITIES CLEARING CORPORATION
(Self-Regulatory Organization)

By: _____



Jack P. Nelson
President

SECURITIES AND EXCHANGE COMMISSION

Release No. 34 ; File No. SR-NSCC-77-1

SELF-REGULATORY ORGANIZATIONS

In the Matter of
Proposed Rule Changes By
National Securities Clearing Corporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on , the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

Statement of the Terms of Substance of the Proposed Rule Changes

1. Text of Proposed Rule Changes

Rule 3, Section 1 of the Rules of the SCC Division of National Securities Clearing Corporation (NSCC) states that the SCC Division shall maintain a list of securities which may be the subject of contracts cleared through the SCC Division and which are called "Cleared Securities" and that the SCC Division may from time to time add securities to such list.

The SCC Division of NSCC proposes to add to its list of Cleared Securities all debt securities listed from time to time on the American Stock Exchange, Inc. (AMEX).

Rule 3, Section 1 of the Rules of the ASECC Division of NSCC states that the ASECC Division shall maintain a list of the securities which may be the subject of contracts cleared through the ASECC Division and which are called "Cleared Securities" and that the ASECC Division may from time to time remove securities from such list.

The ASECC Division of NSCC proposes to remove from its list of Cleared Securities all debt securities listed from time to time on AMEX.

(b). Not applicable.

(c). Not applicable.

2. Procedures of Self-Regulatory Organization

The Board of Directors of NSCC has approved the proposed rule changes.

3. Purposes of Proposed Rule Change

NSCC proposes as soon as possible to include in its interfaces with Midwest Clearing Corporation (MCC), Pacific Clearing Corporation (PCC) and Stock Clearing Corporation of Philadelphia (SCCP) the

ability to settle transactions in debt securities listed on the New York Stock Exchange, Inc. (NYSE) and AMEX. In anticipation of Phase II of NSCC's operations as contemplated by the Order of the Securities and Exchange Commission granting registration to NSCC as a clearing agency (Securities Exchange Act of 1934, Release No. 16163) NSCC has developed a data processing capability to permit such transactions to be included in such interfaces. This data processing capability will work most efficiently if it operates in connection with a single NSCC division rather than two or three NSCC divisions. As a consequence, NSCC proposes that this data processing capability accept transactions in debt securities for such interfaces from the SCC Division. In order to permit the inclusion of debt securities listed from time to time on AMEX in such interfaces, NSCC proposes that all AMEX listed debt securities transactions to be settled through its SCC Division rather than through its ASECC Division.

4. Bases under the Act for Proposed Rule Change

(a) Not applicable.

(b) The proposed rule change relates to the removal of impediments to and perfection of the

mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by permitting the expansion of the NSCC interfaces with MCC, PCC and SCCP.

5. Comments Received From Members, Participants or Other Proposed Rule Change

None.

6. Burden on Competition

NSCC does not perceive that the proposed rule change would constitute a burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the

foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within days after the date of this publication.

For the Commission by the Division of
Market Regulation, pursuant to delegated authority.

Secretary

Document No. 3

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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FEB 2 1977

Form 19b-4A

Proposed Rule Changes
by

NATIONAL SECURITIES CLEARING CORPORATION
(Exact Name of Self-Regulatory Organization)

File No. SR-NSCC-77-2.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

Rule 7, Section 10 of the Rules of the SCC Division of NSCC is proposed to be amended to read as follows:

(a) A Special Representative may submit, on any business day in accordance with the time schedules established or from time to time determined by the Corporation, [odd-lot] transaction data, which may reflect the netted results of other transactions, as to the rights and obligations of a [Clearing] Member which calls for the delivery of [Cleared Securities] any security which the Corporation has stated is acceptable for purposes of this Rule, and is between [Clearing] Members, notwithstanding the fact that the rights and obligations do not represent transactions compared under the foregoing sections of this Rule, provided that the data submitted regarding the transaction meets the requirements specified in the Procedures. The obligations of the [Clearing] Member reflected in such [odd-lot] transaction data shall be deemed to have been confirmed and acknowledged by the [Clearing] Member designated by the Special Representative as a party thereto and to have been adopted by such [Clearing] Member and, for the purposes of these Rules and determining the rights and obligations between the Corporation and any such [Clearing] Member under these Rules, any such Member which is not a Clearing Member shall be deemed to be a Clearing Member and such obligation shall be valid and binding upon such [Clearing] Member to the same extent as any such transaction compared under the foregoing sections of this Rule would be valid and binding on a Clearing Member, and shall be deemed to be transactions[,] compared under this Rule. A [Clearing] Member which has been so designated by a Special Representative shall resolve any differences or claims regarding the rights and obligations reflected in the [odd-lot] transaction data submitted by the Special Representative with the Special Representative, and the Corporation shall have no responsibility in respect thereof or to adjust its records or the accounts of the [Clearing] Member in any way, otherwise than pursuant to the instructions of the Special Representative.

(b) A Special Representative may submit, on any business day in accordance with the time schedules established or from time to time determined by the Corporation, transaction data, which may reflect the netted results of other transactions, as to the rights and obligations of itself and another party which is not a Member (a "non-participant") which calls for the delivery of any security which the Corporation has stated is acceptable for the purposes of this Rule notwithstanding the fact that the rights and obligations do not represent transactions compared under the foregoing sections of this Rule, provided that the data submitted regarding the transaction meets the requirements specified in the Procedures and that the Special Representative designates a clearing agency (as defined in the Securities Exchange Act of 1934) which has been granted registration as a clearing agency under the Securities Exchange Act of 1934 (a "registered clearing agency") as responsible for the obligations of the non-participant. The obligations of the Special Representative and the non-participant reflected in such transaction data shall be deemed to have been compared and acknowledged by the Special Representative for the purposes of this Rule. In the event that the registered clearing agency does not accept responsibility for the obligations of the non-participant reflected in such transaction data, the Special Representative shall be responsible therefor.

and the last paragraph of Rule 39 of the Rule of the SCC Division is proposed to be amended and read as follows:

Rule 39. The Corporation may accept or rely upon any instruction given to the Corporation by a [Clearing] Member including wire transmission, physical delivery or delivery by other means of instructions recorded on magnetic tape or other media or of facsimile copies of instructions, in form acceptable to the Corporation and in accordance with the Procedures, which reasonably is understood by the Corporation to have been delivered to the Corporation by the [Clearing] Member, and the Corporation, shall have no responsibility

or liability for any errors which may occur, without negligence on the Corporation's part, in the course of transmission or recording of any transmissions of which may exist in any magnetic tape, document or other media so delivered to the Corporation.

The Corporation may accept and rely upon any instruction given to the Corporation by a Special Representative, including wire transmission, physical delivery or delivery by other means of instructions, in form acceptable to the Corporation and in accordance with the Procedures, which reasonably is understood by the Corporation to have been delivered to the Corporation by the Special Representative[, provided that such instruction does not relate to the Comparison Operation], and the Corporation shall have no responsibility or liability for any errors which may occur, without negligence on the Corporation's part, in the course of transmission or recording of transmission or which may exist in any magnetic tape, document or other media so delivered to the Corporation and the Corporation shall be entitled to act pursuant to any such instruction as though such instruction had been received from the [Clearing] Member for which the Special Representative is acting.

Any [Clearing] Member delivering instructions as provided above, or on whose behalf a Special Representative shall deliver instructions as provided above, shall indemnify the Corporation, and any of its employees, officers, directors, shareholders, agents, Settling Members and Non-Members who may sustain any loss, liability or expense as a result of (a) any act done in reliance upon the authenticity of any instruction received by the Corporation, (b) the inaccuracy of the information contained therein or (c) effecting transactions in reliance upon such information or instruction against any such loss, liability or expense so long as such transactions are effected in accordance with such information and instructions even though they may be inaccurate or not authentic and so long as the person asserting a right to indemnification shall not have knowledge of such inaccuracy or lack of authenticity at the time of the event or events giving rise to such loss, liability or expense.

Notwithstanding the foregoing, the Corporation will not act upon any instruction purporting to have been given by a [Clearing] Member or a Special Representative which is received by wire transmission or in the form of facsimile copies or magnetic tape or media other than written instructions or from a Special Representative commencing one business day after the Corporation receives written notice from the [Clearing] Member that the Corporation shall not accept such instructions until such time as the [Clearing] Member shall withdraw such notice.

For the purposes of these Rules a Special Representative shall be [(i) Carlisle, de Coppel & Co., so long as it shall be a Clearing Member, but only to the extent that firm, or one or more of its partners, acts as an odd-lot dealer or broker and (ii) any Clearing] either a Member or a registered clearing agency [, but only to the extent that it, or one or more of its partners or officers, acts as an odd-lot dealer or broker] which [Clearing Member] applies to the Corporation for such status and designates those Members and non-participants for which it will act, provided, however, that the Corporation will not act upon any instruction received from a Special Representative which applies pursuant to this [clause (ii)] paragraph until (i) 10 business days after written notice of its designation as such is delivered by the Corporation to Settling Members and Non-Members and the Members and non-participants for which the Special Representative proposes to act which notice shall be delivered by the Corporation promptly after its receipt of such application or (ii) each Member and non-participant for which the Special Representative proposesto act has consented thereto in a writing delivered to the Corporation.

(b) Not applicable.

(c) Not applicable.

2. Procedures of Self-Regulatory Organization

The Board of Directors of NSCC has approved the proposed rule change.

3. Purpose of Proposed Rule Change

The proposed rule change expands the class of persons which may become a Special Representative to include any registered clearing agency and any Member of the SCC Division ("Member" being defined in Rule 1 of the SCC Division Rules to encompass Clearing Members, Affiliate Members and Associate Members).

In addition, the proposed rule change ~~amends~~ ~~Section 10 of Rule 7~~ to permit a Special Representative to submit transaction data ~~in respect of transactions other than odd lot transactions~~ under two separate arrangements i.e. when the Special Representative acts for a Member and when the Special Representative acts for a person other than a Member (a non-participant).

Special Representative Acting for a Member

Proposed Section 10(a) of Rule 7 permits a Special Representative for a Member to submit trade data for both sides of a transaction between two Members and thereby bind both Members in the same manner as two Clearing Members are bound when a compared trade is confirmed by them. Any objection by either Member which is a party to a trade to the submission by the Special Representative is a matter to be resolved between the Member and the Special Representative.

(N.B. that under Rule 39, as proposed to be amended, any Member can, within a 10 day period after notice that a Special Representative proposes to act for it in this manner, deny such proposal and thereby

avoid the assumption of liabilities which would arise under this Rule.)

For example, The Depository Trust Company (DTC) might as to transactions confirmed by a broker and its customer in DTC's ID System submit both sides of the transaction to the SCC Division for settlement in the SCC Division CNS System whereupon the selling side (e.g. the customer) would have a CNS obligation to deliver to the SCC Division and the buying side (the broker) would have a CNS obligation to receive from the SCC Division. This would involve non-Clearing Member Customers of Clearing Members in CNS transactions and provide the netting benefits of the CNS System to such non-Clearing Members.

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As an additional example, a Member which sold securities for another Member (its correspondent) might enter the sell side of its transaction in the normal SCC Division Comparison Operation thereby incurring, after comparison a CNS obligation to deliver and, acting as Special Representative for the correspondent, submit transaction data showing the Member as the buyer and the correspondent as the seller. As a consequence, the Member would net out in the CNS System (its sell side netting against its buy side) and the correspondent would generate a CNS obligation to deliver. In other words the correspondent's obligation would be substituted for that of the Member.

Special Representative Acting For a Non-Participant

Proposed Section 10(b) of Rule 7 would permit a Special Representative for a non-participant to submit trade data for both sides of a transaction between the Special Representative and the non-participant where the non-participant is a participant in a registered clearing agency having a RIO interface with the SCC Division. This would permit a Member which executed, e.g., a sell transaction for a non-participant, which is a participant in Pacific Clearing Corporation (PCC), to submit the sell side for comparison thereby generating a CNS deliver obligation for itself and, acting as Special Representative for the non-participant, to submit transaction data showing the Special Representative as the buyer and PCC, on behalf of the non-participant, as the seller. The CNS obligation ~~would~~ if acceptable to PCC, would be assumed by PCC and transferred to the non-participant in the normal RIO interface. The Special Representative would net out in the CNS System so that PCC would, as to the SCC Division CNS System, be substituted for the Special Representative. If PCC rejected the transaction, which it is entitled to do under the Clearing Facility RIO Agreement, the Special Representative would be obligated and would, presumably, resolve the matter with the non-participant.

4. Basis under the Act for Proposed Rule Change

(a) Not applicable.

(b) The proposed rule change relates to the prompt and accurate clearance and settlement of securities transactions; fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and the removal of impediments to and perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions in that it makes the CNS System available to persons other than Clearing Members, permits broker to customer and customer side transactions to be included in the CNS System and facilitates and permits the expansion of the existing interfaces.

5. Comments Received From Members, Participants or Others on Proposed Rule Change

None

6. Burden of Competition

NSCC does not perceive any burden of competition.

7. Extension of Time Periods for Commission Action

NSCC does not consent to an extension of the time periods specified in Section 19(b)(2) of the Act.

8. Basis for Rule Taking, or Being Put into Effect Pursuant to Section 19(b)(3)

Not applicable.

9. Exhibits

List of Exhibits to be filed:

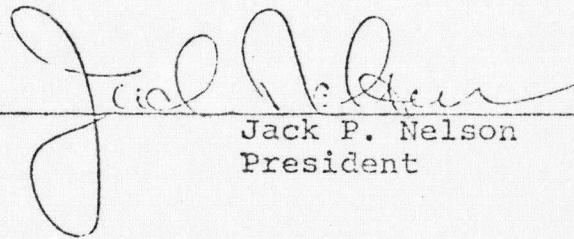
1. Form of Notice of Proposed Rule Change
for Federal Register.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, this self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereto duly authorized.

NATIONAL SECURITIES CLEARING CORPORATION
(Self-Regulatory Organization)

BY: _____



Jack P. Nelson
President

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-

;

File No. SR-NSCC-77-2

SELF-REGULATORY ORGANIZATIONS

In the Matter of
Proposed Rule Changes By
National Securities Clearing Corporation

Pursuant to Section 19(b)(1) of the
Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1),
as amended by Pub. L. No. 94-29, 16 (June 4, 1975),
notice is hereby given that on , on above-
mentioned self-regulatory organization filed with the
Securities and Exchange Commission proposed rule
changes as follows:

Statement of the Terms of Substance of the Proposed
Rule Changes

1. Text of Proposed Rule Change

Rule 7, Section 10 of the Rules of the SCC
Division of NSCC is proposed to be amended to read as
follows:

(a) A Special Representative may submit,
on any business day in accordance with the
time schedules established or from time to
time determined by the Corporation, [odd-lot]
transaction data, which may reflect the netted
results of other transactions, as to the rights
and obligations of a [Clearing] Member which
calls for the delivery of [Cleared Securities]

any security which the Corporation has stated is acceptable for purposes of this Rule,

and is between [Clearing] Members, notwithstanding the fact that the rights and obligations do not represent transactions compared under the foregoing sections of this Rule, provided, that the data submitted regarding the transaction meets the requirements specified in the Procedures. The obligations of the [Clearing] Member reflected in such [odd-lot] transaction data shall be deemed to have been confirmed and acknowledged by the [Clearing] Member designated by the Special Representative as a party thereto and to have been adopted by such [Clearing] Member and, for the purposes of these Rules and determining the rights and obligations between the Corporation and any such [Clearing] Member under these Rules, any such Member which is not a Clearing Member shall be deemed to be a Clearing Member and such obligation shall be valid and binding upon such [Clearing] Member to the same extent as any such transaction compared under the foregoing sections of this Rule would be valid and binding on a Clearing Member, and shall be deemed to be transactions[,] compared under this Rule. A [Clearing] Member which has been so designated by a Special Representative shall resolve any differences or claims regarding the rights and obligations reflected in the [odd-lot] transaction data submitted by the Special Representative with the Special Representative, and the Corporation shall have no responsibility in respect thereof or to adjust its records or the accounts of the [Clearing] Member in any way, otherwise than pursuant to the instructions of the Special Representative.

(b) A Special Representative may submit, on any business day in accordance with the time schedules established or from time to time determined by the Corporation, transaction data, which may reflect the netted results of other transactions, as to the rights and obligations of itself and another party which

is not a Member (a "non-participant") which calls for the delivery of any security which the Corporation has stated is acceptable for the purposes of this Rule, notwithstanding the fact that the rights and obligations do not represent transactions compared under the foregoing sections of this Rule, provided that the data submitted regarding the transaction meets the requirements specified in the Procedures and that the Special Representative designates a clearing agency (as defined in the Securities Exchange Act of 1934) which has been granted registration as a clearing agency under the Securities Exchange Act of 1934 (a "registered clearing agency") as responsible for the obligations of the non-participant. The obligations of the Special Representative and the non-participant reflected in such transaction data shall be deemed to have been compared and acknowledged by the Special Representative for the purposes of this Rule. In the event that the registered clearing agency does not accept responsibility for the obligations of the non-participant reflected in such transaction data, the Special Representative shall be responsible therefor.

and the last paragraph of Rule 39 of the Rules of the SCC Division is proposed to be amended and read as follows:

Rule 39. The Corporation may accept or rely upon any instruction given to the Corporation by a [Clearing] Member including wire transmission, physical delivery or delivery by other means of instructions recorded on magnetic tape or other media or of facsimile copies of instructions, in form acceptable to the Corporation and in accordance with the Procedures, which reasonably is understood by the Corporation to have been delivered to the Corporation by the [Clearing] Member, and the Corporation, shall have no responsibility

or liability for any errors which may occur, without negligence on the Corporation's part, in the course of transmission or recording of any transmissions of which may exist in any magnetic tape, document or other media so delivered to the Corporation.

The Corporation may accept and rely upon any instruction given to the Corporation by a Special Representative, including wire transmission, physical delivery or delivery by other means of instructions, in form acceptable to the Corporation and in accordance with the Procedures, which reasonably is understood by the Corporation to have been delivered to the Corporation by the Special Representative[, provided that such instruction does not relate to the Comparison Operation], and the Corporation shall have no responsibility or liability for any errors which may occur, without negligence on the Corporation's part, in the course of transmission or recording of transmission or which may exist in any magnetic tape, document or other media so delivered to the Corporation and the Corporation shall be entitled to act pursuant to any such instruction as though such instruction had been received from the [Clearing] Member for which the Special Representative is acting.

Any [Clearing] Member delivering instructions as provided above, or on whose behalf a Special Representative shall deliver instructions as provided above, shall indemnify the Corporation, and any of its employees, officers, directors, shareholders, agents, Settling Members and Non-Members who may sustain any loss, liability or expense as a result of (a) any act done in reliance upon the authenticity of any instruction received by the Corporation, (b) the inaccuracy of the information contained therein or (c) effecting transactions in reliance upon such information or instruction against any such loss, liability or expense so long as such transactions are effected in accordance with such information and instructions even though they may be inaccurate or not authentic and

so long as the person asserting a right to indemnification shall not have knowledge of such inaccuracy or lack of authenticity at the time of the event or events giving rise to such loss, liability or expense.

Notwithstanding the foregoing, the Corporation will not act upon any instruction purporting to have been given by a [Clearing] Member or a Special Representative which is received by wire transmission or in the form of facsimile copies or magnetic tape or media other than written instructions or from a Special Representative commencing one business day after the Corporation receives written notice from the [Clearing] Member that the Corporation shall not accept such instructions until such time as the [Clearing] Member shall withdraw such notice.

For the purposes of these Rules a Special Representative shall be [(i) Carlisle, de Coppet & Co., so long as it shall be a Clearing Member, but only to the extent that firm, or one or more of its partners, acts as an odd-lot dealer or broker and (ii) any Clearing] either a Member or a registered clearing agency [, but only to the extent that it, or one or more of its partners or officers, acts as an odd-lot dealer or broker] w [Clearing Member] applies to the Corp; n for such status and designates those ers and non-participants for which it will act, provided, however, that the Corporation will not act upon any instruction received from a Special Representative which applies pursuant to this [clause (ii)] paragraph until (i) 10 business days after written notice of its designation as such is delivered by the Corporation to Settling Members and Non-Members and the Members and non-participants for which the Special Representative proposes to act which notice shall be delivered by the Corporation promptly after its receipt of such application or (ii) each Member and non-participant for which the Special Representative proposes to act has consented thereto in a writing delivered to the Corporation.

(b) Not applicable.

(c) Not applicable.

2. Procedures of Self-Regulatory Organization

The Board of Directors of NSCC has approved the proposed rule change.

3. Purpose of Proposed Rule Change

The proposed rule change expands the class of persons which may become a Special Representative to include any registered clearing agency and any Member of the SCC Division ("Member" being defined in Rule 1 of the SCC Division Rules to encompass Clearing Members, Affiliate Members and Associate Members).

In addition, the proposed rule change amends Section 10 of Rule 7 to permit a Special Representative to submit transaction data in respect of transactions other than odd-lot transactions under two separate arrangements i.e. when the Special Representative acts for a Member and when the Special Representative acts for a person other than a Member (a non-participant).

Special Representative Acting for a Member

Proposed Section 10(a) of Rule 7 permits a Special Representative for a Member to submit trade data for both sides of a transaction between two

Members and thereby bind both Members in the same manner as two Clearing Members are bound when a compared trade is confirmed by them. Any objection by either Member, which is a party to a trade, to the submission by the Special Representative is a matter to be resolved between the Member and the Special Representative.

(N.B. that under Rule 39, as proposed to be amended, any Member can, within a 10 day period after notice that a Special Representative proposes to act for it in this manner, deny such proposal and thereby avoid the assumption of liabilities which would arise under this Rule.)

For example, The Depository Trust Company (DTC) might as to transactions confirmed by a broker and its customer in DTC's ID System submit both sides of the transaction to the SCC Division for settlement in the SCC Division CNS System whereupon the selling side (e.g. the customer) would have a CNS obligation to deliver to the SCC Division and the buying side (the broker) would have a CNS obligation to receive from the SCC Division. This would involve non-Clearing Member Customers of Clearing Members in CNS transactions and provide the netting

benefits of the CNS System to such non-Clearing Members.

As an additional example, a Member which sold securities for another Member (its correspondent) might enter the sell side of its transaction in the normal SCC Division Comparison Operation thereby incurring, after comparison, a CNS obligation to deliver and, acting as Special Representative for the correspondent, submit transaction data showing the Member as the buyer and the correspondent as the seller. As a consequence, the Member would net out in the CNS System (its sell side netting against its buy side) and the correspondent would generate a CNS obligation to deliver. In other words the correspondent's obligation would be substituted for that of the Member.

Special Representative Acting For a Non-Participant

Proposed Section 10(b) of Rule 7 would permit a Special Representative for a non-participant to submit trade data for both sides of a transaction between the Special Representative and the non-participant where the non-participant is a participant in a registered clearing agency having a RIO

interface with the SCC Division. This would permit a Member which executed, e.g., a sell transaction for a non-participant, which is a participant in Pacific Clearing Corporation (PCC), to submit the sell side for comparison thereby generating a CNS deliver obligation for itself and, acting as Special Representative for the non-participant, to submit transaction data showing the Special Representative as the buyer and PCC, on behalf of the non-participant, as the seller. The CNS obligation would, if acceptable to PCC, would be assumed by PCC and transferred to the non-participant in the normal RIO interface. The Special Representative would net out in the CNS System so that PCC would, as to the SCC Division CNS System, be substituted for the Special Representative. If PCC rejected the transaction, which it is entitled to do under the Clearing Facility RIO Agreement, the Special Representative would be obligated and would, presumably, resolve the matter with the non-participant.

4. Basis under the Act for Proposed Rule Change

- (a) Not applicable.
- (b) The proposed rule change relates to the prompt and accurate clearance and settlement of

securities transactions; fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and the removal of impediments to and perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions in that it makes the CNS System available to persons other than Clearing Members, permits broker to customer and customer side transactions to be incurred in the CNS System and facilitate and permits the expansion of the existing interfaces.

5. Comments Received From Members, Participants or Other Proposed Rule Change

None.

6. Burden of Competition

NSCC does not perceive any burden of competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the

above-mentioned self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within days after the date of this publication.

For the Commission by the Division of
Market Regulation, pursuant to delegated authority.

Secretary

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Document No. 4
SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

SECURITIES EXCHANGE ACT OF 1934
Release No. 13308 / February 28, 1977

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL
SECURITIES CLEARING CORPORATION (File No. SR-NSCC-77-1)

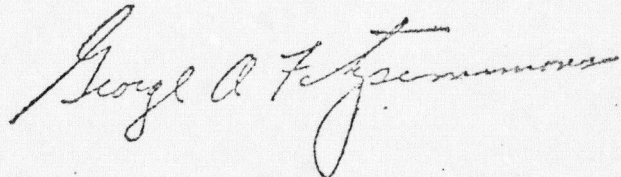
The National Securities Clearing Corporation ("NSCC") submitted on February 22, 1977, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), to clear through the Stock Clearing Corporation division of NSCC debt securities listed on the American Stock Exchange, Inc. ("Amex") and currently cleared through the American Stock Exchange Clearing Corporation division of NSCC. The purpose of the proposed rule change is to permit inclusion of Amex debt securities in NSCC's interfaces with Midwest Clearing Corporation, Pacific Clearing Corporation and Stock Clearing Corporation of Philadelphia. NSCC has requested that the Commission, pursuant to Section 19(b)(2) of the Act, find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof.

Publication of the submission is expected to be made in the Federal Register during the week of February 28, 1977. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the Federal Register. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549. Reference should be made to File No. SR-NSCC-77-1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's

Public Reference Room, 1100 L Street, N.W., Washington, D. C.
Copies of the filing will also be available at the principal
office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation,
pursuant to delegated authority.



George A. Fitzsimmons
Secretary

div. no. 8 ✓

HIGHLIGHT

SELF-REGULATORY ORGANIZATIONS--SEC publishes notice of a proposed rule change by the National Securities Clearing Corporation ("NSCC") to clear through the Stock Clearing Corporation division of NSCC debt securities listed on the American Stock Exchange, Inc. ("Amex") and currently cleared through the American Stock Exchange Clearing Corporation division of NSCC; the purpose of the proposed rule change is to permit inclusion of Amex debt securities in NSCC's interfaces with Midwest Clearing Corporation, Pacific Clearing Corporation and Stock Clearing Corporation of Philadelphia. Comments by 21 days from the date of publication.

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-13308 ; File No. SR-NSCC-77-1

SELF-REGULATORY ORGANIZATIONS

In the Matter of
Proposed Rule Changes By
National Securities Clearing Corporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on February 22, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

Text of Proposed Rule Changes

Rule 3, Section 1 of the Rules of the SCC Division of National Securities Clearing Corporation (NSCC) states that the SCC Division shall maintain a list of securities which may be the subject of contracts cleared through the SCC Division and which are called "Cleared Securities" and that the SCC Division may from time to time add securities to such list.

The SCC Division of NSCC proposes to add to its list of Cleared Securities all debt securities listed from time to time on the American Stock Exchange, Inc. (AMEX).

Rule 3, Section 1 of the Rules of the ASECC Division of NSCC states that the ASECC Division shall maintain a list of the securities which may be the subject of contracts cleared through the ASECC Division and which are called "Cleared Securities" and that the ASECC Division may from time to time remove securities from such list.

The ASECC Division of NSCC proposes to remove from its list of Cleared Securities all debt securities listed from time to time on AMEX.

NSCC proposes as soon as possible to include in its interfaces with Midwest Clearing Corporation (MCC), Pacific Clearing Corporation (PCC) and Stock Clearing Corporation of Philadelphia (SCCP) the

ability to settle transactions in debt securities listed on the New York Stock Exchange, Inc. (NYSE) and AMEX. In anticipation of Phase II of NSCC's operations as contemplated by the Order of the Securities and Exchange Commission granting registration to NSCC as a clearing agency (Securities Exchange Act of 1934, Release No. 16163) NSCC has developed a data processing capability to permit such transactions to be included in such interfaces. This data processing capability will work most efficiently if it operates in connection with a single NSCC division rather than two or three NSCC divisions. As a consequence, NSCC proposes that this data processing capability accept transactions in debt securities for such interfaces from the SCC Division. In order to permit the inclusion of debt securities listed from time to time on AMEX in such interfaces, NSCC proposes that all AMEX listed debt securities transactions to be settled through its SCC Division rather than through its ASECC Division.

Basis under the Act for the Proposed Rule Change

The proposed rule change relates to the removal of impediments to and perfection of the

mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by permitting the expansion of the NSCC interfaces with MCC, PCC and SCCP.

Comments have neither been solicited nor received.

NSCC does not perceive that the proposed rule change would constitute a burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the

foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of
Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

February 28, 1977

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES EXCHANGE ACT OF 1934
Release No. 13318 / March 1, 1977

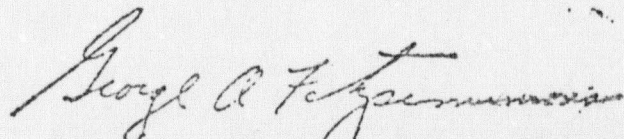
NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL
SECURITIES CLEARING CORPORATION (File No. SR-NSCC-77-2)

On February 22, 1977, the National Securities Clearing Corporation ("NSCC") submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, proposed changes to the rules of the Stock Clearing Corporation ("SCC") division of NSCC which would expand the class of persons who may become Special Representatives to include any registered clearing agency and any member of the SCC division of NSCC. In addition, the proposed rule change specifies those circumstances under which a Special Representative may submit transaction data for a member and a person other than a member (i.e., a non-participant).

Publication of the submission is expected to be made in the Federal Register during the week of March 7, 1977. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the Federal Register. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-77-2.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation,
pursuant to delegated authority.



George A. Fitzsimmons
Secretary

HIGHLIGHT

SELF-REGULATORY ORGANIZATIONS--SEC publishes notice of proposed changes to the rules of the Stock Clearing Corporation ("SCC") division of National Securities Clearing Corporation which would expand the class of persons who may become Special Representatives and would specify those circumstances under which a Special Representative may submit transaction data for members and persons other than members. Comments by 21 days from the date of publication.

SECURITIES AND EXCHANGE COMMISSION

Release No. 34- 13318 ; File No. SR-NSCC-77-2

SELF-REGULATORY ORGANIZATIONS

In the Matter of
Proposed Rule Changes By
National Securities Clearing Corporation

Pursuant to Section 19(b)(1) of the
Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1),
as amended by Pub. L. No. 94-29, 16 (June 4, 1975),
notice is hereby given that on February 22, 1977, the above-
mentioned self-regulatory organization filed with the
Securities and Exchange Commission proposed rule
changes as follows:

Text of Proposed Rule Change

Rule 7, Section 10, of the Rules of the SCC
Division of NSCC is proposed to be amended to read as
follows (Brackets indicate deletions and italics indicate new
material): (a) A Special Representative may submit,
on any business day in accordance with the
time schedules established or from time to
time determined by the Corporation, [odd-lot]
transaction data, which may reflect the netted
results of other transactions, as to the rights
and obligations of a [Clearing] Member which
calls for the delivery of [Cleared Securities]

any security which the Corporation has stated is acceptable for purposes of this Rule, and is between [Clearing] Members, notwithstanding the fact that the rights and obligations do not represent transactions compared under the foregoing sections of this Rule, provided, that the data submitted regarding the transaction meets the requirements specified in the Procedures. The obligations of the [Clearing] Member reflected in such [odd-lot] transaction data shall be deemed to have been confirmed and acknowledged by the [Clearing] Member designated by the Special Representative as a party thereto and to have been adopted by such [Clearing] Member and, for the purposes of these Rules and determining the rights and obligations between the Corporation and any such [Clearing] Member under these Rules, any such Member which is not a Clearing Member shall be deemed to be a Clearing Member and such obligation shall be valid and binding upon such [Clearing] Member to the same extent as any such transaction compared under the foregoing sections of this Rule would be valid and binding on a Clearing Member, and shall be deemed to be transactions[,] compared under this Rule. A [Clearing] Member which has been so designated by a Special Representative shall resolve any differences or claims regarding the rights and obligations reflected in the [odd-lot] transaction data submitted by the Special Representative with the Special Representative, and the Corporation shall have no responsibility in respect thereof or to adjust its records or the accounts of the [Clearing] Member in any way, otherwise than pursuant to the instructions of the Special Representative.

(b) A Special Representative may submit, on any business day in accordance with the time schedules established or from time to time determined by the Corporation, transaction data, which may reflect the netted results of other transactions, as to the rights and obligations of itself and another party which

is not a Member (a "non-participant") which calls for the delivery of any security which the Corporation has stated is acceptable for the purposes of this Rule, notwithstanding the fact that the rights and obligations do not represent transactions compared under the foregoing sections of this Rule, provided that the data submitted regarding the transaction meets the requirements specified in the Procedures and that the Special Representative designates a clearing agency (as defined in the Securities Exchange Act of 1934) which has been granted registration as a clearing agency under the Securities Exchange Act of 1934 (a "registered clearing agency") as responsible for the obligations of the non-participant. The obligations of the Special Representative and the non-participant reflected in such transaction data shall be deemed to have been compared and acknowledged by the Special Representative for the purposes of this Rule. In the event that the registered clearing agency does not accept responsibility for the obligations of the non-participant reflected in such transaction data, the Special Representative shall be responsible therefor.

and the last paragraph of Rule 39 of the Rules of the SCC Division is proposed to be amended and read as follows:

Rule 39. The Corporation may accept or rely upon any instruction given to the Corporation by a [Clearing] Member including wire transmission, physical delivery or delivery by other means of instructions recorded on magnetic tape or other media or of facsimile copies of instructions, in form acceptable to the Corporation and in accordance with the Procedures, which reasonably is understood by the Corporation to have been delivered to the Corporation by the [Clearing] Member, and the Corporation, shall have no responsibility

or liability for any errors which may occur, without negligence on the Corporation's part, in the course of transmission or recording of any transmissions of which may exist in any magnetic tape, document or other media so delivered to the Corporation.

The Corporation may accept and rely upon any instruction given to the Corporation by a Special Representative, including wire transmission, physical delivery or delivery by other means of instructions, in form acceptable to the Corporation and in accordance with the Procedures, which reasonably is understood by the Corporation to have been delivered to the Corporation by the Special Representative[, provided that such instruction does not relate to the Comparison Operation], and the Corporation shall have no responsibility or liability for any errors which may occur, without negligence on the Corporation's part, in the course of transmission or recording of transmission or which may exist in any magnetic tape, document or other media so delivered to the Corporation and the Corporation shall be entitled to act pursuant to any such instruction as though such instruction had been received from the [Clearing] Member for which the Special Representative is acting.

Any [Clearing] Member delivering instructions as provided above, or on whose behalf a Special Representative shall deliver instructions as provided above, shall indemnify the Corporation, and any of its employees, officers, directors, shareholders, agents, Settling Members and Non-Members who may sustain any loss, liability or expense as a result of (a) any act done in reliance upon the authenticity of any instruction received by the Corporation, (b) the inaccuracy of the information contained therein or (c) effecting transactions in reliance upon such information or instruction against any such loss, liability or expense so long as such transactions are effected in accordance with such information and instructions even though they may be inaccurate or not authentic and

so long as the person asserting a right to indemnification shall not have knowledge of such inaccuracy or lack of authenticity at the time of the event or events giving rise to such loss, liability or expense.

Notwithstanding the foregoing, the Corporation will not act upon any instruction purporting to have been given by a [Clearing] Member or a Special Representative which is received by wire transmission or in the form of facsimile copies or magnetic tape or media other than written instructions or from a Special Representative commencing one business day after the Corporation receives written notice from the [Clearing] Member that the Corporation shall not accept such instructions until such time as the [Clearing] Member shall withdraw such notice.

For the purposes of these Rules a Special Representative shall be [(i) Carlisle, de Coppet & Co., so long as it shall be a Clearing Member, but only to the extent that firm, or one or more of its partners, acts as an odd-lot dealer or broker and (ii) any Clearing] either a Member or a registered clearing agency [, but only to the extent that it, or one or more of its partners or officers, acts as an odd-lot dealer or broker] which [Clearing Member] applies to the Corporation for such status and designates those Members and non-participants for which it will act, provided, however, that the Corporation will not act upon any instruction received from a Special Representative which applies pursuant to this [clause (ii)] paragraph until (i) 10 business days after written notice of its designation as such is delivered by the Corporation to Settling Members and Non-Members and the Members and non-participants for which the Special Representative proposes to act which notice shall be delivered by the Corporation promptly after its receipt of such application or (ii) each Member and non-participant for which the Special Representative proposes to act has consented thereto in a writing delivered to the Corporation.

The proposed rule change expands the class of persons which may become a Special Representative to include any registered clearing agency and any Member of the SCC Division ("Member" being defined in Rule 1 of the SCC Division Rules to encompass Clearing Members, Affiliate Members and Associate Members).

In addition, the proposed rule change amends Section 10 of Rule 7 to permit a Special Representative to submit transaction data in respect of transactions other than odd-lot transactions under two separate arrangements i.e. when the Special Representative acts for a Member and when the Special Representative acts for a person other than a Member (a non-participant).

Special Representative Acting for a Member

Proposed Section 10(a) of Rule 7 permits a Special Representative for a Member to submit trade data for both sides of a transaction between two

Members and thereby bind both Members in the same manner as two Clearing Members are bound when a compared trade is confirmed by them. Any objection by either Member, which is a party to a trade, to the submission by the Special Representative is a matter to be resolved between the Member and the Special Representative.

(N.B. that under Rule 39, as proposed to be amended, any Member can, within a 10 day period after notice that a Special Representative proposes to act for it in this manner, deny such proposal and thereby avoid the assumption of liabilities which would arise under this Rule.)

For example, The Depository Trust Company (DTC) might as to transactions confirmed by a broker and its customer in DTC's ID System submit both sides of the transaction to the SCC Division for settlement in the SCC Division CNS System whereupon the selling side (e.g. the customer) would have a CNS obligation to deliver to the SCC Division and the buying side (the broker) would have a CNS obligation to receive from the SCC Division. This would involve non-Clearing Member Customers of Clearing Members in CNS transactions and provide the netting

benefits of the CNS System to such non-Clearing Members.

As an additional example, a Member which sold securities for another Member (its correspondent) might enter the sell side of its transaction in the normal SCC Division Comparison Operation thereby incurring, after comparison, a CNS obligation to deliver and, acting as Special Representative for the correspondent, submit transaction data showing the Member as the buyer and the correspondent as the seller. As a consequence, the Member would net out in the CNS System (its sell side netting against its buy side) and the correspondent would generate a CNS obligation to deliver. In other words the correspondent's obligation would be substituted for that of the Member.

Special Representative Acting For a Non-Participant

Proposed Section 10(b) of Rule 7 would permit a Special Representative for a non-participant to submit trade data for both sides of a transaction between the Special Representative and the non-participant where the non-participant is a participant in a registered clearing agency having a RIO

interface with the SCC Division. This would permit a Member which executed, e.g., a sell transaction for a non-participant, which is a participant in Pacific Clearing Corporation (PCC), to submit the sell side for comparison thereby generating a CNS deliver obligation for itself and, acting as Special Representative for the non-participant, to submit transaction data showing the Special Representative as the buyer and PCC, on behalf of the non-participant, as the seller. The CNS obligation would, if acceptable to PCC, would be assumed by PCC and transferred to the non-participant in the normal RIO interface. The Special Representative would net out in the CNS System so that PCC would, as to the SCC Division CNS System, be substituted for the Special Representative. If PCC rejected the transaction, which it is entitled to do under the Clearing Facility RIO Agreement, the Special Representative would be obligated and would, presumably, resolve the matter with the non-participant.

The proposed rule change relates to the prompt and accurate clearance and settlement of securities transactions;

fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and the removal of impediments to and perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions in that it makes the CNS System available to persons other than Clearing Members, permits broker to customer and customer side transactions to be included in the CNS System and facilitates and permits the expansion of the existing interfaces.

Comments have neither been received nor solicited.

NSCC does not perceive any burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the

above-mentioned self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation,
pursuant to delegated authority.

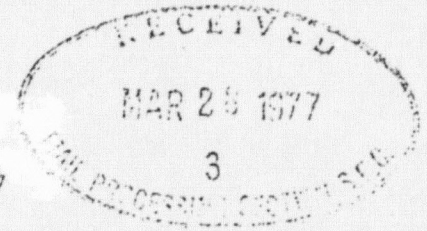
George A. Fitzsimmons
Secretary

March 1, 1977

Document No. 6

TAD

DEPOSITORY CORPORATION
2 BROADWAY, NEW YORK, N. Y. 10004



March 25, 1977

Mr. George Fitzsimmons
Secretary
Securities & Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

RE: File No. SR-NSCC-77-1 and
File No. SR-NSCC-77-2

Dear Sir:

The undersigned has reviewed the proposal by National Securities Clearing Corporation ("NSCC") to change Section 1 of Rule 3 and Section 10 of Rule 7 of the rules of its SCC Division, and functioning as a clearing agency/depository in the national system has certain comments.

In its order granting NSCC registration as a clearing agency (1934 Act Release No. 13163, dated January 13, 1977), the Commission specified certain conditions which would have to be met before NSCC began operating an integrated clearing and settlement system, without prior Commission approval. To the best of our knowledge NSCC has not fulfilled any of the specified conditions. More importantly, it has not fulfilled the first of the Commission's conditions, that NSCC establish interfaces or links to certain other clearing agencies without charge for interface or interface movements (The "Free Interface Condition").

Nevertheless, by the proposed change in SCC Division Rule 3, NSCC is attempting to create an integrated system for the debt issues traded on the two New York exchanges, and by the proposed change in SCC Division Rule 10, NSCC appears to be attempting to create an integrated one account system for all securities of every description wherever traded. In short, by the device of proposing a rule change for

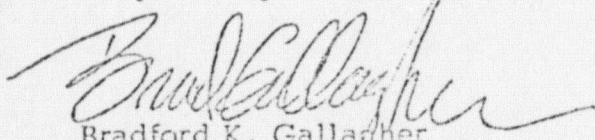
Mr. George Fitzsimmons
Secretary

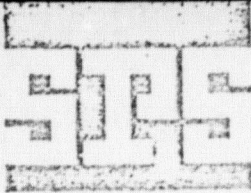
March 25, 1977

Commission approval, NSCC seeks to evade "The Free Interface Condition" that it provide interfaces before integrating its system. It appears that these rules changes proposed by NSCC would place any competing clearing agency at an immediate disadvantage because of the "inappropriate use of its (NSCC's) pivotal position, . . . , during the interim before Implementation of Phase II . . ." (page 82 of Release).

Accordingly, if our interpretation of the proposed rules is accurate it would seem appropriate for the Commission to institute proceedings under Section 19(b) (2) (B) of the 1934 Act of determine whether the proposed rule changes shall be disapproved.

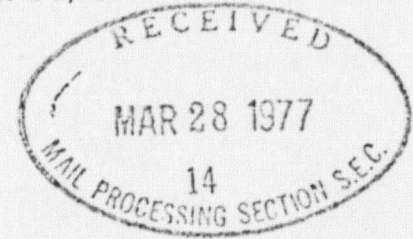
Respectfully submitted,


Bradford K. Gallagher
Chairman & President



Document No. 7
Bradford Securities Processing Services, Inc.
80 Pine Street, New York, New York 10005
(212) 344 8701

March 24, 1977



Secretary
Securities and Exchange Commission
Washington, D.C

File No SR - NSCC - 77 - 1 and
SR - NSCC - 77 - 2
SR - DTC - 77 - 3 (Release 34-13335)

SECURITIES AND EXCHANGE COMMISSION
RECEIVED

MAR 29 1977

DIVISION OF MARKET REGULATION

Dear Sir:

With respect to these files, this corporation (herein BSPPS) requests that the Commission institute proceedings under Section 19 (b) (2) (B) of the 1934 Act to determine whether the proposed rule changes shall be disapproved. In addition, BSPPS requests that hearings be consolidated. It is particularly important that public hearings be utilized because only in this way, with witnesses under oath, can the intent and interrelationship of these rule changes be ascertained. For example, in the context of file number SR-DTC-77-3 (release 34-13335) an examination should seek to identify the source or sponsor of the concept contained in the new agreement that only non-profit entities could benefit from a free depository interface. Certainly these series of proposed rule changes by affiliated entities (the New York Stock Exchange, Amex, and NASD together control both NSCC and DTC) having a concerted, significant, and adverse impact upon their only proprietary competitors, would appear to take on full significance as a determined, massive and (in the anti-trust sense of the word) predatory attack by a near monopoly upon a competitor. While this appears to be the objective of the rule changes to BSPPS, BSPPS wishes to understand and cooperate as a part of the national market system. It is also anxious to be proven wrong; to be shown publicly that the reasons for these rule changes are not to destroy BSPPS but to benefit a national market system.

Secretary
Securities and Exchange Commission
March 24, 1977
Page 2

Before turning to the specific rules, it should be noted that BSPS understands the SEC and Congress to be seeking a national market system, with competitors functioning within that system. BSPS supports this objective. However, BSPS repeatedly has sought an interface with the system, both by direct intervention with the SEC's action vis-a-vis the NSCC registration as a clearing agency, and by all other legal methods available to it (see memo and Application for Exemption of BSPS to the SEC dated 2/15/77). However, to date, BSPS, the one major non-exchange affiliated, proprietary clearing agency has been denied any interface. Therefore, the public is faced with this anomaly: the only clearing agency in the nation that must rely solely upon its ability to charge less, or provide better service, or both, is being subjected not only to a denial of any interface for clearing, but now is subjected to a series of proposed affirmative acts which place BSPS at a severe competitive disadvantage, by NSCC, a new monopoly, with the apparent consent of the SEC. Is it any wonder that BSPS might draw the tentative conclusion that there is a determined effort to put BSPS out of business as a clearing agency by one means or another?

- 1) Rule 3, Section 1. NSCC through its SCC Division now seeks to use its existing, dominant position to expand into the clearance of debt securities. It seems to BSPS almost beyond belief that this effort, at this point of time*, could have been undertaken without full awareness by NSCC that BSPS is dependent for a major part of its earnings on its position as a competitive entity in the clearance of debt securities. BSPS is one of the major threats to NSCC's continued registration as a merged entity. By adding the full service of debt security clearance, with NSCC's dominant power, and before BSPS is given an interface so it too can offer a full line of service, would jeopardize BSPS's very existence. The authority to adopt this Rule change should be denied

*Presumably NSCC is busily engaged in executing the plans and meeting the conditions which were a part of its obtaining registration as a clearing agency. Yet, as an obviously high priority of business, it takes time to amend its rules, to be in a position to strike hard at its major opponent's economic viability.

Secretary
Securities and Exchange Commission
March 24, 1977
Page 3

at least until BSPS is granted an interface so that it too can have the opportunity to fully serve its customers and thus compete with the giant NSCC combine.

- 2) Rule 3, Section 1. In order to assure that BSPS could not interface even for debt clearance purposes, and despite its present large scale (over \$30 Billion in 1976) debt clearance operations, NSCC's proposed rule would limit debt securities interface to existing RIO interfaces. BSPS has no RIO interface. Thus, it again appears this proposed rule is aimed clearly at the present business of BSPS and can only result in BSPS being driven out of existence, even before it could maintain its effort to judicially review the SEC's action approving NSCC's registration as a clearing agency.
- 3) Rule 7, Section 10. This rule appears to allow any NSCC (SCC Division) member to designate itself as a "Special Representative" and to submit net trades. The synergistic, subtle, and destructive impact of this rule can only be understood when read together with Rule 3, Section 1. Taken in conjunction with Rule 3, Section 1, it would appear that large institutions could input all trades in debt securities into the NSCC system through a "Special Representative". The compared trades could then be entered into the settlement process. This sequence would eliminate, indeed stamp out any opportunity for a competitive system. In one fell blow the nation would be left with one monopoly, for debt securities today, and if these proposed Rules are any indication of what to expect, for equity securities tomorrow. Yet the public is to be deprived of any of the inherent

Secretary
Securities and Exchange Commission
March 24, 1977
Page 4

safeguards of price and innovation offered by competition. Not even the Commission went this far. On pages 81-82 of its NSCC action the Commission stated that it would exercise its authority under the Act to ensure that NSCC does not make inappropriate use of its pivotal position.

- 4) BSPS also wishes at this point to comment with respect to SEC Release 13335, which is published on behalf of DTC, and which would restrict depository interfaces with it to non-profit organizations and to trust companies. As noted, The New York Stock Exchange, Amex and NASD control DTC. Thus they must be charged with the actions of DTC. It also should be understood that BSPS, as a proprietary (for profit) organization intends to use TAD Depository Corporation (herein TAD). Accordingly, anything which hurts TAD's ability to charge competitive rates hurts BSPS. The proposed DTC Rule change would preclude a free depository interface unless four requirements are met including trust company status and operating on a not for profit basis, both of which would preclude TAD from a free interface. This Rule thus imposes one more burden upon the private or proprietary sector of the national market system. This appears to be further evidence that BSPS, as a competitor within the proprietary sector is a competitor to be destroyed. Apart from this impact, when seen as a part of a series of actions, this proposed rule is contrary to the intent of Congress.

Secretary
Securities and Exchange Commission
March 24m 1977
Page 5

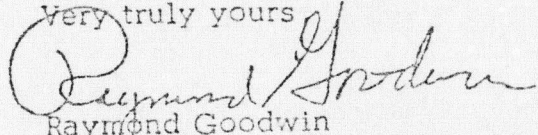
As stated in Senate Committee Report No 94-95
(1975.)

"The reference to shareholders or members make it clear that the bill establishes no norms as to whether clearing agencies should or should not be operated for profit".

Yet DTC, affiliated with NSCC, would do indirectly what Congress refused to do directly. Furthermore, as noted in Release 34-13337(42 Federal Register 15159) the monopoly and restraint of trade is being extended because Midwest Securities Trust Company, and Pacific Security Depository Trust Company have "agreed" with DTC to extend the monopoly. A hearing could enable the Commission, its staff and the public to ascertain whether any incentives or threats were used to achieve this "agreement".

In these days of strife in the world, it is all too easy to assume that "you", in this case BSPS, are the intended victim of a conspiracy to destroy or to harm. It seems to any rational person inconceivable that we are back in the days of the early oil and railroad companies, when one either joined the monopoly or was crushed. However, those practices did exist until eliminated by massive regulatory action functioning under the anti-trust laws. Such forces may again be forming in the securities industry. It thus behooves the Commission to require the persons seeking to make Rule changes, which would have a severe and negative impact upon a competitor, to carry the burden of proof that the needs of the public require such action. Certainly to date this burden of proof has not been met.

Very truly yours


Raymond Goodwin
Executive Vice President

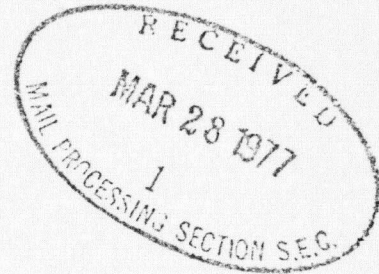
BRADFORD NATIONAL CLEARING CORPORATION

TWO BROADWAY, NEW YORK, N. Y. 10004

March 23, 1977

ALLEN KARRON
PRESIDENT
(212) 952-4054

Mr. George A. Fitzsimmons
Secretary
Security and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549



File No. SR-NSCC-77-1 ✓
SR-NSCC-77-2

Dear Mr. Fitzsimmons:

As the Commission is aware, BNCC has filed a legal action to challenge Release No. 13163 which granted registered clearing agency status to the National Securities Clearing Corporation (NSCC). Release No. 13163 also imposed certain conditions upon NSCC before consolidation (merger) of its operations could occur.

While the Commission accepted an exclusion of BNCC as the processor of the merged NSCC, it apparently sought to maintain the viability of each division (NCC, SCC and ASECC) and the regional clearing agencies. If the conditions were not met to the Commission's satisfaction, then the intent seemed to be to seek another path to a national clearing system.

BNCC objects to both rule changes noted above for the following reasons:

- If BNCC prevails in its judicial review and the Commission approves NSCC rules referred to, there will be that much less of the current structure and BNCC's victory will be pyrrhic.
- The Commission and the NSCC should direct their efforts to the merged NSCC rules, not to rules for the SCC Division.

Mr. Fitzsimmons
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Both Rule 3-1 and Rule 7-1- would put Stock Clearing Corporation at a competitive advantage in the event that the Commission revokes NSCC's registration because it does not meet the required conditions. Such rules should only be approved when the loss of NSCC registration is no longer a possibility.

Sincerely,

Allen Karon

AK:jd

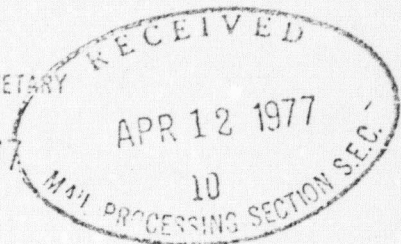
Document No. 9
Bradford Securities Processing Services, Inc.
80 Pine Street, New York, New York 10005
(212) 344 5701

April 7, 1977

George Fitzsimmons, Esq.
Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

RECEIVED
OFFICE OF THE SECRETARY

APR 12 1977



RE: Files ~~SR-NSCC-77-1~~
SR-NSCC-77-2

Dear Mr. Fitzsimmons:

The National Securities Clearing Corporation ("NSCC") has filed
Forms 19-4A set forth in the above named files. The Commission has
solicited public comments on these filings pursuant to Section 19(b) of the
Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder.
Although the period for comment has expired, members of the Commission's
staff have advised that because of our particular interest in these proposals
they would receive and consider our comments. Needless to say, we appreciate
this courtesy.

We previously filed a letter of comment on these SCC proposals.
However, further consideration, as will be set forth below, leads us to
conclude that these proposals will adversely affect our present services as
well as our ability to expand and to develop new services. Further, the fact
that we are submitting this letter and have previously submitted a letter of
comment and the statements made therein are not and should not be construed
or intended in any way to waive, modify, influence or otherwise affect our
rights or positions or those of any of our subsidiaries or affiliates. This is
particularly so with respect to the petition filed in the U.S. Court of Appeals
for the District of Columbia for review of the Commission's order granting
registration as a clearing agency to NSCC.

File number SR-NSCC-77-1 would amend Section 1 of Rule 3 of the
SCC Division of NSCC ("SCC") to combine in SCC the clearance and settlement
of all debt securities listed on the American Stock Exchange, Inc. ("AMEX").
File number SR-NSCC-77-2 would amend Section 10 of Rule 7 and Rule 39 of
SCC. These amendments to Rules 7 and 39 would allow a Special Representative
to furnish trade data or the netted results of trades, which need not have been
compared by SCC, to SCC for trades by SCC members or non-members. This
trade data will be processed by SCC which will generate deliver or receive

George Fitzsimmons Esq.
April 7, 1977
Page 2

obligations. Any registered clearing agency or member of SCC may be a Special Representative for a member or non-member of SCC. For, among other reasons, the reasons set forth below, we respectfully request the Commission to institute proceeding pursuant to Section 19(b) (2) (B) of the Act and Rule 19b-4 thereunder to determine whether to disapprove the proposed amendments to SCC Rules 3, 7 and 39.

As the Commission is well aware, trading on the New York Stock Exchange, Inc. ("NYSE") constitutes in excess of 70% of all securities exchange trading in the United States. Further, trading on the various "regional" stock exchanges is primarily in securities listed on the NYSE and AMEX. Article XII of the NYSE Constitution and various NYSE Rules adopted pursuant thereto require that, unless the parties to a trade on the NYSE specifically agree to the contrary, a trade executed on the NYSE must be cleared and settled through SCC and only by "Clearing Members" of SCC. Although the parties may have the right to agree to the contrary, the net effect of these provisions is to assure SCC that it will clear and settle almost all trades executed on the NYSE. Further, these provisions assure that such clearance and settlement will only be effected by "Clearing Members" of SCC who are also member firms of the NYSE.

Article XII of the NYSE Constitution and the Rules adopted pursuant thereto effectively preclude any registered clearing agency other than SCC from offering to or performing the comparison function for trades executed on the NYSE. The Commission has already acknowledged that these provisions are not in conformity with the Act. In Release 34-13027 (November 30, 1976), the Commission notified the NYSE that, pursuant to Section 31(b) of the Securities Acts amendments of 1975 (the "Amendments"), these provisions which tie the clearance and settlement of securities transactions to the clearing agency affiliated with the market in which the transaction occurred impose restraints on competition and impede the development of efficient methods of clearance and settlement. In the face of these restraints and tying arrangements, the proposed amendments to SCC Rules 3, 7 and 39 would expand the SCC comparison clearing and settlement service to all trades in NYSE listed securities and AMEX listed debt securities regardless of where or by whom executed. These amendments mean that while the SCC main clearance and settlement activities are and will continue (at least until June, 1977) to be sheltered from direct competition from other clearing agencies, SCC will be able to compete directly for the business of these other clearing agencies. This is grossly unfair, if not a violation of the Act and other laws. The Commission has stated that participants in a clearing agency should be able to compare and deliver trades executed in a market place through the clearing agency affiliated with that market place (Release 34-13163 (January 13, 1977)). However, we are sure that the Commission did not intend to, and as a matter of law could not, mandate clearing a trade through the clearing agency

George Fitzsimmons, Esq.

April 7, 1977

Page 3

affiliated with the market place where the trade occurred. These proposed amendments together with Article XII of NYSE Constitution and the Rules adopted pursuant thereto result in a very one sided situation.

These SCC proposals and Article XII and the Rules thereunder will combine with the economic costs of maintaining membership in more than one clearing agency to force many brokerage firms who are members of both the NYSE and one or more regional exchanges to withdraw from all clearing agencies other than NSCC and will compel all other clearing agencies to become members of, not just interface with, NSCC. In fact, we understand that one registered clearing agency has already applied for membership in SCC. The only way a clearing agency will be able to compete with SCC and retain members who are also members of the NYSE will be if it belongs to SCC and performs not only clearance and settlement for its members/clients but also does at least some of the bookkeeping operations for its members/clients - e.g. the "P&S" work of trade comparison. Besides forcing the clearance and settlement of all trades in NYSE listed securities and AMEX listed debt securities into SCC, these SCC proposals and Article XII and the Rules adopted thereunder will erect a barrier to any future competition. Even if Article XII and the Rules adopted thereunder are abolished, the net effect of the bar from competition that they will afford SCC while they are still in effect combined with the effect of these SCC proposals would be to place SCC in an untouchable monopolistic position.

This monopolistic result will occur because it is impossible for any clearing agency to operate effectively unless it receives the raw trade data from its members/clients. The SCC proposals will draw to SCC this data for trades in NYSE securities and AMEX listed debt securities regardless of where or by whom executed while at the same time other clearing agencies are barred from trying to attract directly such data for trades executed on the NYSE. This is contrary to the provisions of Sections 2 and 17A of the Act and appears to contradict Section 31(b) of the Amendments.

Section 17A of the Act was intended to centralize in the Commission authority over all clearing agencies. It was not intended to centralize all clearance and settlement activities for qualified securities in one clearing agency (Sections 17A (a) (2); 17A (b) (3) (F) and 17A (b) (3) (I)). Yet, quite clearly that will be the effect of these SCC proposals together with Article XII of the NYSE Constitution and the Rules adopted pursuant thereto.

The SCC Rule proposals raise several other concerns. Under proposed Rule 7, Section 10 Special Representatives may submit to SCC for clearance and settlement netted trade data, which may have been compared and netted by the Special Representative. Members of SCC and registered clearing agencies may be Special Representatives. These comparing and netting functions of the Special Representative come within the definition of clearing agency in Section 3(a)(23) (A)

George Fitzsimmons, Esq.
April 7, 1977
Page 4

of the Act. The SCC proposals, as drafted, need clarification so that a member wishing to act as a Special Representative can determine whether he will be within or without the exceptions from the definition of clearing agency set forth in Section 3(A) (23) (B) of the Act.

Another concern is the impact of the SCC proposals on Section 17A(b) (3) (B) of the Act. Under the SCC proposals any member or a clearing agency may be a Special Representative. A member of SCC, as provided for in SCC Rule 2, may include a member firm of a national securities exchange or registered national securities association, a bank or trust company, a clearing corporation as defined in Article 8 of the Uniform Commercial Code, an insurance company, a registered investment company and "a financial institution which demonstrates to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services." Section 17A (b) (3) (B) provides that participants in a clearing agency may be broker-dealers, other registered clearing agencies, banks and trust companies, registered investment companies, insurance companies and such other persons or class of persons as the Commission designates by rule. The Commission has indicated a desire that any entity which receives, delivers or holds securities should have access to a clearing agency (Release 34-13163 (January 13, 1977)). However, to date the Commission has neither adopted nor proposed a Rule to implement this desire. Yet, the SCC proposals could result in a delegation to SCC or one of its members of the Commission's rule making authority over who shall have access to a clearing agency. Further, a Special Representative could input trade data into SCC for a nonparticipant not within the categories enumerated in Section 17A (b) (3) (B). This could well violate the Act. The fact that the non-participant may have consented to or been on notice of the Special Representative's actions on his behalf is of no value in light of Section 29 of the Act if the non-participant wishes to disavow the transaction. The invalidity of the obligation of the non-participant and the guarantee of such obligations by the Special Representative may cause the Special Representative to be bankrupt or otherwise insolvent, thereby unduly exposing both SCC and its members and in turn their customers to a financial risk.

Therefore, for the reasons set forth above, among other reasons, we respectfully request that, unless the proposed amendments to SCC Rules 3, 7 and 39 are withdrawn, the Commission institute proceedings pursuant to Section 19(b) (2) (B) of the Act and Rule 19b - 4 thereunder to determine whether to disapprove these proposals. Because of the serious nature of our comments, we are forwarding copies of this letter to Messrs. Anthony C. J. Nuland, Harry Melamed and Hugh A. O'Boyle of the Commission staff and to NSCC. We would be more than happy to meet with representatives of the Commission and its staff to amplify and further discuss these comments.

Sincerely yours,

Ramond Goshorn

Document No. 10
National Securities Clearing Corporation

55 Water Street
New York, New York 10041

SECURITIES AND EXCHANGE COMMISSION

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APR 20 1977

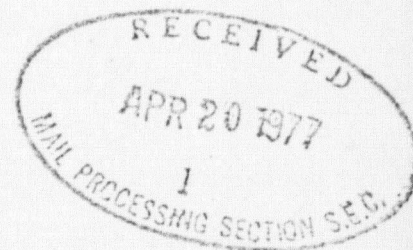
DIVISION OF MARKET REGULATION

Jack Nelson
President

April 15, 1977

Re: File No. SR-NSCC-77-2

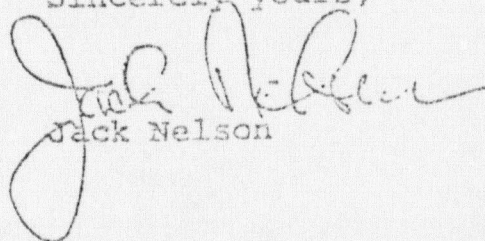
Mr. Anthony C.J. Nuland
Securities and Exchange
Commission
500 North Capitol St., N.W.
Washington, D.C.



Dear Tony:

Pursuant to the discussions between Tom Williams of our counsel Milbank, Tweed, Hadley & McCloy and you, we wish to advise you that the following change should be made in our above-mentioned proposed rule change: the last paragraph of Rule 39 of the Rules of the SCC Division as proposed to be amended is changed to delete the words "and non-participants" from both clause (i) and clause (ii) thereof so that the paragraph shall read as indicated in Exhibit A hereto.

Sincerely yours,


Jack Nelson

For the purposes of these Rules a Special Representative shall be [(i) Carlisle, de Coppet & Co., so long as it shall be a Clearing Member, but only to the extent that firm, or one or more of its partners, acts as an odd-lot dealer or broker and (ii) any Clearing] either a Member or a registered clearing agency [, but only to the extent that it, or one or more of its partners or officers, acts as an odd-lot dealer or broker] which [Clearing Member] applies to the Corporation for such status and designates those Members and non-participants for which it will act, provided, however, that the Corporation will not act upon any instruction received from a Special Representative which applies pursuant to this [clause (ii)] paragraph until (i) 10 business days after written notice of its designation as such is delivered by the Corporation to Settling Members and Non-Members and the Members for which the Special Representative proposes to act which notice shall be delivered by the Corporation promptly after its receipt of such application or (ii) each Member for which the Special Representative proposes to act has consented thereto in a writing delivered to the Corporation.

Transcription of Tape Recording of Securities and Exchange
Commission Open Meeting to Consider Rule Changes Proposed by the
National Securities Clearing Corporation
Files Nos. SR-NSCC-77-1 and SR-NSCC-77-2

April 21, 1977

MR. LOOMIS:

We've come then to item 3, the rule proposals filed by the National Securities Clearing Corporation. Gentlemen, I understand your feeling is that notwithstanding the concern expressed in the comments, this really isn't a major substantive decision, and it does facilitate interfaces rather than interfere with them.

MR. NULAND:

Correct.

MR. EVANS:

I think it is very important, Tony, that we know that to be a fact. Because, as I read it, Bradford may be the only real competitor with NSCC in many instances and to the extent that anything is done that would jeopardize their ability to compete, I think we need to be very concerned.

MR. NULAND:

Quite.

MR. EVANS:

I read your response to what they had to say, and I guess I had sort of anticipated that NSCC would come in with an overall plan as to how they would get us to Phase II, and it would sort of all happen at the same time. To the extent it comes in piecemeal, I think we should be very careful to assure

MR. EVANS, continued

that they aren't somehow cementing their monopoly position in a way that would be inappropriate.

MR. NULAND:

Well, I think our intent is to prevent that from happening. NSCC will shortly file an overall plan. It has circulated a draft overall plan to all interested clearing corporations, including Bradford National Corporation and its subsidiaries. The implementation of the order must proceed piecemeal, with something that is going to take, if you remember, we estimated some six months, to piece together. Everything can't be done at once. There has to be a block and another block, and so forth. But by taking each step and exposing it to public comment and then carefully reviewing the comments, the staff hopes to be able to advise the Commission whether any particular step is irrevocable or whatever. This step in our judgment is not. It is consistent with what the order provides and, if anything, I think it would facilitate the ability of a competitor to get into an overall clearing and settlement competitive posture with NSCC. Unless you have these arrangements, it is not possible for another clearing agency to compete effectively with NSCC.

MR. EVANS:

Now, it's recommended by the letters that came in with comment that we start a proceeding, disapproval proceedings.

MR. NULAND:

Correct.

MR. EVANS:

We all know that this disapproval proceeding is unbiased and balanced.

I mean we have to start it and it's called a disapproval proceeding but it is not something we've made a decision on. How long would it take to have that kind of proceeding and is this a forum in which those who oppose this would have a better chance to make the points they'd like to make?

MR. NULAND:

Well, to answer the first question, I think a proceeding of that sort would likely consume a month or a month and a half. Not because it requires oral hearings or anything like that, just because there have to be announcements and times set up for comment, and so forth. Interested persons have already had an opportunity to comment, and all the comments we've received are of course before the Commission. We've analyzed the points raised in those comments and given the Commission our reaction to them.

MR. LOOMIS:

You don't feel that this is a major step or perhaps the proper place in which to focus the significant competitive issues here. I gather this is sort of a step along the way but again, and particularly, the objective is to get these debt securities sort of into the mainstream of the clearance system, rather than being off by themselves somewhere.

MR. NULAND:

Well, the debt securities currently are processed by the Securities Industry Automation Corporation -- the clearance is performed by SIAC. The problem has been that these particular debt securities have never been eligible for

MR. NULAND, continued

inclusion in the interfaces through which other clearing corporations have related to the SCC division of NSCC, or in essence to NSCC in this case, and the various regional clearing agencies have long sought to have these Amex debt issues included in those interfaces. Their efforts to do this antedate approval of the NSCC registration, for that matter. I mean, it is something that is not particularly startling or, as you suggested, criminal.

MR. EVANS:

There is a suggestion here that a result of one of these, if we approve one of these proposed rule changes, would be to force many brokerage firms who are members of both New York and one or more regional exchanges to withdraw from all clearing agencies other than NSCC, and compel all others to become members -- all other clearing agencies to become members of NSCC instead of having interfaces. Now, my understanding of your response to that is that it is not true. If it were true would you have expected some of the regional exchanges to make such a response?

MR. NULAND:

Oh, yes. Precisely, because the whole point of setting up the interfaces is so that a broker who is using a regional clearing corporation will be able to get at New York and Amex listed transactions through the interface and through the regional clearing corporation.

MR. EVANS:

You know there is something I don't understand about all of this. You know Bradford is a very capable operator. They are very efficient. And for them to

MR. EVANS, continued

have had these kind of comments which all seem to be missing the point, seems very strange to me. Now I guess I can't ask you to try to tell me why they all miss the point, but doesn't that seem rather odd they would miss the entire point on these and they'll be wrong in every case.

MR. NULAND:

Well.

MR. LOOMIS:

It seems to me they were a little confused as to -- perhaps I was too as to this concept of a special representative and they thought the special representative clearing houses would have to become special representatives and join other clearing houses for this purpose and you, as I understood say that isn't what is contemplated.

MR. NULAND:

No, the clearing house itself does not have to be a special representative but for interfaces to operate, the interfacing clearing houses have to have arrangements with each other. I'm not entirely sure at this point how those arrangements will be structured. To date, they've just been, you know, on an ad hoc basis with agreements to pay each other's fees or not pay each other's fee and so forth. But, I think the answer to your question is simply that the submission itself is complex. As we've indicated in the memo, there were a couple of references in the submission that oughtn't to have been there and confused the issue somewhat. I also understand that personnel at Bradford who drafted some of the letters did not have a very long time to review the submission or get in the

MR. NULAND, continued

comment letters. On the original comment letters, of course there was plenty of time. On the last comment letter, which is the one that contains most of the meat of the objections, had to be prepared very quickly and obtained an extension of the period for initial consideration, so that it could come in.

MR. POLLOCK:

I understand that BSPS is not a continuous net settlement organization.

MR. NULAND:

Correct.

MR. POLLOCK:

That what they do is accept physical delivery and collection services.

MR. NULAND:

They finance deliveries or not, they'll do straight deliveries.

MR. POLLOCK:

Who settles those? Or how are they settled? Are they settled on a different system than a continuous system, if you know.

MR. NULAND:

Much of what goes through BPS is municipals, right now.

MR. POLLOCK:

Not debt? Do they have any debt, do we know?

MR. NULAND:

I believe they have some corporate debt.

MR. POLLOCK:

Supposing they wanted to interface with NSCC. Could they become a special representative and interface?

MR. NULAND:

They would have to become a ... well, let me think about that. I believe under this rule proposal they would be able to become a special representative because they are a registered clearing agency. I mean legally they could become

MR. POLLOCK:

They are a registered clearing agency?

MR. NULAND:

Yes, so legally they could become a special representative, but in terms of operational practicalities I'm not entirely sure what that would do for them unless they were prepared to take trades from a number of brokers and submit both sides of the trades for comparison as a special representative. Or else unless they were prepared to do back-office work for brokers.

MR. POLLOCK:

They have only one side and not both sides. Would there be any advantage for them in becoming a special representative? Or is it essential that they have both sides? The reason I ask you this ...

MR. NULAND:

You can go both ways.

MR. POLLOCK:

The reason I ask you this, Tony, if you look at their second letter, I guess it is the one dated March 24, 1977, they make the assertion in the paragraph

MR. POLLOCK, continued

labeled I, Rule 3, section 1. Have you got that letter?

MR. NULAND:

Yes.

MR. POLLOCK:

The last sentence says "By adding the full service of debt security clearance with NSCC's dominant power and before BSPS is given an interface so it too can offer a full line of service, would jeopardize BSPS's very existence."

Now, I was just curious as to the interrelationship of the rule change with this assertion and the factual support, if any, for it.

MR. NULAND:

Well, apparently there may be more than two exceptions to this but they are insignificant. The kinds of issues that go through BSPS, at least according to discussions we've had with them in the past, are not issues that have cleared in the CNS systems. Now, of course there may be some people who might choose to participate in CNS systems and may be doing all their comparison, settlement on a broker-to-broker basis, then they would be making deliveries through BSPS. But, you don't have really a competitive confrontation here on the kinds of issues that are going through the two systems. This is the first problem. The second problem is for BSPS to be competitive with NSCC in the sense of offering all the kinds of services NSCC offers, they'd have to set up some sort of netting system or other system for allocating settlement obligations between or among its participants, really, and probably will have to interface

MR. NULAND, continued

that with the variety of clearing corporations. And then lastly, they'd probably want to work out some sort of settlement process through which book entry delivery, to satisfy the obligations, could be effected. They may very well choose to go down that road, but they are not there now. And that is why this particular paragraph is very difficult to deal with, and it seems to me to miss the mark.

MR. EVANS:

Is there anything about this procedure or in doing this right at this time as compared to doing the other things that need to be done in order to get to Phase II that jeopardizes the ability of Bradford and their various subsidiaries or affiliates to compete any more than it would be if it were all done at once is the thing I'm trying to get at.

MR. NULAND:

Oh, I see.

MR. EVANS:

Is this being done in a way that jeopardizes their ability to compete any more than it would if they did it all at once and went into Phase II at one time.

MR. NULAND:

Now that I don't know.

MR. EVANS:

That's really what I'm asking. That is the only fair question I think I could ask you.

MR. LOOMIS:

I gather you don't expect it to be all done at once.

MR. NULAND:

No, it can't be all done at once.

MR. EVANS:

Since it can't all be done, then there may be a difference in the way it's done that would be more difficult on competitors. You see, when we get the central market system, which this relates to somewhat, but when we get there we suppose it will be equal for everyone to compete. The way we get there can have a major impact on those that are competing until we get there. And I wonder if this has any of those elements in it. Do you think this is as balanced an approach to getting to Phase II as could be?

MR. NULAND:

I believe so, yes. There is a famous saying that I last heard from Don Baker at lunch, which was "preservation of competition should not be confused with preservation of a particular competitor." This is one of a number of steps that is welcomed by a number of other clearing agencies who have participated in the proceedings leading up to the NSCC order. This is a step toward fulfillment of the condition that they sought and that the Commission imposed in large part at their behest.

MR. POLLOCK:

I don't think anybody is questioning that. I think that all that we are trying to be certain of is that in fulfilling that, that group of competitors is not doing it in

MR. POLLOCK, continued

an unfair way to an outside competitor who doesn't happen to be a self-regulatory organization.

MR. NULAND:

No, but let me point out that BSPS is a self-regulatory organization under the statute. It is a registered clearing agency and every place you see the words "registered clearing agency," the rule, in this rule proposal, it covers BSPS as well as MCC or PCC or any other clearing corporation.

MR. POLLOCK:

But as I understand, it is that they couldn't interface at this point under our order because they don't perform a continuous net clearing system and that's why I referred to this sentence, to see the relationship between what we were doing and their argument. And as I understood what you said, you said they are not performing these services which would be necessary for them to really interface in an efficient manner with NSCC.

MR. NULAND:

That is correct.

MR. EVANS:

Is it true that all the other clearing agencies are non-profit and part of the so-called securities industry whereas Bradford may be on the outside of the "in" group, a profit-making institution that is trying to survive.

MR. NULAND:

No, they ...

MR. EVANS:

I'm not suggesting that someone should survive if they don't compete properly; I'm suggesting only that if they have an equal opportunity to compete and they can't compete, that's the way it is. I mean that is the way it ought to be. But, is there anything to your knowledge that would indicate that those that are non-profit making, self-regulatory organizations are having a concerted effort to make it difficult for Bradford?

MR. NULAND:

Well, I'm not aware of that in relation to these particular rule changes. There is another submission that will be coming up to the Commission of a depository interface fee.

MR. POLLOCK:

Yes, that one we're not considering this morning.

MR. LOOMIS:

Yes, we don't have that one this morning.

MR. NULAND:

But I suspect there is some prejudice but I'm not aware of any concerted effort.

MR. LOOMIS:

The fact that they are a profit-making organization isn't the significant fact in this particular thing, the fact is that they don't have a continuous net system is what is significant in this area.

MR. NULAND:

Right.

MR. POLLOCK:

Do you think all that John was doing was using that as a short-hand description for people who might have unified interest against somebody else?

MR. NULAND:

No, but here I think you have a three-prong hole and a two-prong plug problem. At such time as the prongs and the holes match, we would recommend that the Commission do most everything it can certainly to establish interfaces and to let BSPS get in.

MR. POLLOCK:

I thought it was a very clear memorandum, and I thought your analysis was terrific.

MR. NULAND:

Thank you.

MR. LOOMIS:

John, do you have any further questions?

MR. EVANS:

No, I don't believe I do. I must say I hope you'll watch this carefully as they progress towards Phase II and I presume you are. You know the Commission's very strong position that everyone has an opportunity to compete equally regardless of who they are and, as I understand your memo, which is very clear, and your comments here today, that is exactly what you are trying to do.

MR. LOOMIS:

Number 3 is approved.

MR. NULAND:

That is what I wanted to establish.

(LAUGHTER)

MR. LOOMIS:

Is anybody here on Number 4?

Document No. 12
UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 13456 / April 21, 1977

In the Matter of :
:
National Securities Clearing :
Corporation :
Two Broadway :
New York, N.Y. 10005 :
:
(File Nos. SR-NSCC-77-1 and SR-NSCC-77-2) :

ORDER APPROVING RULE CHANGES SUBMITTED BY THE NATIONAL SECURITIES
CLEARING CORPORATION

On February 22, 1977, the National Securities Clearing Corporation ("NSCC") submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), proposed rule changes providing for the settlement of American Stock Exchange, Inc. ("Amex") transactions in listed debt securities through NSCC's Stock Clearing Corporation Division ("SCC Division") rather than through NSCC's American Stock Exchange Clearing Corporation Division ("ASECC Division"). NSCC also submitted on the same date proposed rule changes amending the definition and function of a Special Representative.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, the rule changes were published in the Federal Register (42 F.R. 13172, 13174, March 9, 1977), and the public was invited to submit comments until March 30, 1977. Notice of the filings and an invitation for comments also appeared in Securities Exchange Act Release Nos. 13308 and 13318, February 28, 1977. Four letters of comment were received. Three of these letters were received within the comment period from Bradford National Clearing Corporation, Bradford Securities Processing Services, Inc. ("BSPS") and TAD Depository Corporation. A fourth comment letter from BSFS was received after the expiration of the comment period. At the staff's request, NSCC granted the Commission a one week extension of the time provided in Rule 19b-4 for consideration of the rule changes in order to permit Commission consideration of the second BSFS letter.

①

The first submission would amend Section 1 of Rule 3 of the SCC Division of NSCC to add to its list of cleared securities all debt securities listed on the Amex. The purpose of this change is to permit the inclusion of transactions in Amex listed debt securities in the SCC Division interfaces with Midwest Clearing Corporation, Pacific Clearing Corporation and Stock Clearing Corporation of Philadelphia.

4 Pursuant to its second submission, NSCC proposes to amend Rule 7, Section 10 and Rule 39 of the SCC Division Rules of NSCC to expand the class of persons who may become "Special Representatives" under the SCC Division rules to include any registered clearing agency and any member of the SCC Division. The clearing agency or member would be required to apply to NSCC for Special Representative status and would be required to designate those members and non-participants for which it will act.

A Special Representative would be permitted to submit data regarding transactions other than odd-lot transactions when acting for a member or a non-participant. A Special Representative acting for a member could submit trade data for both sides of a transaction between two members and thereby bind both members to the trade in the same manner as two clearing members are bound when a compared trade is confirmed by them. Each member would be responsible to the SCC Division for the performance of the member's side of trades submitted on its behalf, and any objection by either member to the Special Representative's submission would be resolved between the member and the Special Representative. A Special Representative acting for a non-participant could submit trade data for both sides of a transaction between the Special Representative and the non-participant if the non-participant were a participant in a registered clearing agency which, through participation in the SCC Division's Regional Interface Operation ("RIO"), had an interface with the SCC Division. Under the SCC Division's Rules, the Special Representative would be responsible to NSCC for the performance of both sides of any trade submitted on behalf of a non-participant by the Representative and not accepted by the interfacing clearing agency.

The four comment letters raise a number of objections to the proposed rule changes and three of the letters request that the Commission institute proceedings to disapprove the proposed rule changes. First, the commentators state that both submissions are inconsistent with the order granting NSCC registration as a clearing

(2)

agency. 1/ Specifically, the commentators allege that the proposed rule changes are an attempt by NSCC to evade "The Free Interface Condition" to that order which requires NSCC to establish interfaces and appropriate links with other registered clearing agencies prior to consolidating into a single processing operation the three discrete operations inherited by NSCC from its three predecessor clearing corporations. Second, the commentators express concern that the proposed rule changes will adversely affect competition among registered clearing agencies in view of the present restrictions regarding clearance and settlement of trades executed on the floor of the Amex and the New York Stock Exchange, Inc. ("NYSE"). Third, BSIS requests that the SCC Special Representative proposal be amended so that an SCC member can determine whether, by acting as a Representative, he would be performing clearing agency functions within the meaning of Section 3(a)(23) of the Act and therefore be required to register as a clearing agency. Fourth, BSIS suggests that by submitting trade data to SCC for non-participants a Special Representative could subvert the purpose of Section 2(a)(5)(3)(B) of the Act which enumerates those entities which must be granted access by a registered clearing agency. Finally, BSIS raises a question concerning the obligations to NSCC of a non-participant for whom a trade is submitted to the SCC Division by a Special Representative.

The Commission has reviewed the proposed rule changes and the comment letters received and has determined that the proposed rules are consistent with the order granting NSCC's registration as a clearing agency and with the purposes of the Act. Both proposed rule changes are designed to implement "The Free Interface Condition" to the order. The first submission would add transactions in Amex-listed debt securities to the transactions in NYSE- and Amex-listed equity securities and NYSE-listed debt securities which currently may be cleared through clearing agencies participating in the SCC Division's RIO interfaces. The second submission would enable a non-participant in NSCC who participates in a clearing agency interfaced with the SCC Division through RIO to clear and settle, through the interface, transactions in any security eligible for clearance through the SCC Division. Instead of restricting competition among registered clearing agencies, the proposed rule change would allow broker-dealers a wider choice in clearance and settlement.

1/ Securities Exchange Act Release No. 13163, January 13, 1977.

3

4
C

Although Article XIII of the NYSE Constitution, other NYSE rules and comparable Amex provisions arguably restrict the clearance and settlement of NYSE and Amex listed transactions to the SCC and ASECC Divisions of NSCC, on their face those provisions permit parties to NYSE and Amex transactions to make alternative clearance and settlement arrangements. By facilitating the use of alternative clearing and settlement arrangements, we believe the proposed rule changes would, in effect, break the link between NYSE and Amex trading and SCC and ASECC Division clearing and settlement which has existed historically due to the unavailability of viable alternative arrangements. Moreover, each of the NYSE and Amex provisions containing restrictions has been identified by the Commission, pursuant to Section 31(b) of the Securities Acts Amendments of 1975 (the "1975 Amendments"), as possibly inconsistent with the Act. 2/

The Commission has determined that the SCC proposals need not be clarified to enable an SCC member to determine whether his activities as a Special Representative require registration as a clearing agency. Any question which may arise concerning the need for a SCC member acting as a Special Representative to register as a clearing agency can be resolved on a case by case basis at the time they arise and need not be resolved generally in connection with the Commission's review of the proposed rule changes. 3/

2/ Section 31(b) of the 1975 Amendments provides a statutory mechanism for the Commission to review the rules of national securities exchanges and registered securities associations for compliance with the Act. On December 1, 1976, pursuant to Section 31(b), the Commission mailed letters to, among others, the Amex and the NYSE specifying provisions of their rules which appeared not to be in compliance with the Act. Securities Exchange Act Release No. 13027 (December 1, 1976) 41 F.R. 53557 (December 7, 1976.) While the Commission recognizes that not all steps necessary to implement the 1975 Amendments can be taken simultaneously, the Commission expects that any amendments necessary to bring the Amex and NYSE rules into conformity with the securities processing provisions of the Act will be made before NSCC satisfies the conditions contained in the order and combines its three currently discrete processing operations.

3/ For example, under the Act, and unless the Commission by rule provides otherwise, the term "clearing agency" does not include a broker or dealer who would be deemed to be a clearing agency solely by reason of functions performed by him as part of his customary brokerage and dealing activities.

4

An entity for which a Special Representative submits trades would not, without more, be a participant in NSCC within the meaning of the Act. 4/ Accordingly, the Commission does not believe it is necessary to consider whether, under the SCC Division Rules,⁶ a Special Representative could submit trades for entities not enumerated under Section 17A(b)(3)(B) of the Act as persons who may participate in registered clearing agencies.

Finally, the staff has reviewed the commenter's question regarding the obligations of a non-participant for a trade submitted to the SCC Division by a Special Representative on the non-participant's behalf. The proposed rule provides that if the registered clearing agency of which the non-participant is a member does not accept responsibility for the obligations of the non-participant reflected in the transaction data, the Special Representative will be responsible for the transaction. Also, operation of the clearing fund and mark-to-the-market 5/ provisions of the SCC Division Rules 6/ would provide the same protection for transactions submitted by a Special Representative as for any other transactions

4/ Section 3(a)(24) of the Act in pertinent part provides "[p]articipant" does not include a person whose only use of a clearing agency is (A) through another person who is a participant . . ."

5/ A "mark-to-the-market" payment is the amount required by a clearing system from any party to a trade guaranteed by the system who becomes a potential net obligor of the system because the market price of the securities involved in the clearing transactions moves away from the contract price for the clearing transactions.

6/ SCC Division Rules 4 and 13, respectively.

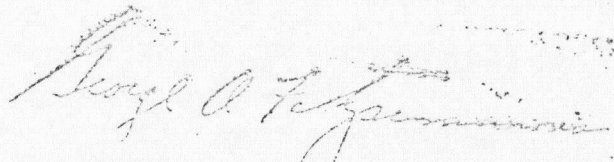
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submitted to SCC's CNS system. To eliminate any question concerning the Special Representative's liability, NSCC has deleted a reference in the proposed rule changes which unintentionally gave the appearance of establishing an obligation to NSCC by a non-participant for trades submitted on his behalf by a Special Representative. 7/

7/ The Commission has reviewed the NSCC submissions and finds that they are consistent with the order granting NSCC registration as a clearing agency and with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies. 7/

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR-NSCC-77-1 and SR-NSCC-77-2 be, and hereby are, approved.

By the Commission



George A. Fitzsimmons
Secretary

7/ Letter dated April 15, 1977.



